रजिस्ट्री सं० डी० 222 REGISTERED No. D. 222

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 12] नई दिल्ली, शनिवार, मार्च 18, 1972/फाल्गुन 28, 1893
No. 12] NEW DELHI, SATURDAY, MARCH 18, 1972/PHALGUNA 28, 1893

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर) केन्द्रीय प्राधिकरणों द्वारा जारी किये गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

MINISTRY OF PETROLEUM & CHEMICALS

New Delhi, the 3rd March 1972

S.O. 878.—In exercise of the powers conferred by section 3 of the Commissions of Inquiry Act, 1952 (60 of 1952) and all other powers hereunto enabling, the Central Government hereby directs that in the resolution of the Government of India in the Ministry of Petroleum & Chemicals and Mines & Metals (Department of Petroleum) No. 28(11)/70-OR dated the 22nd August, 1970, as subsequently amended, for paragraph 4, the following paragraph shall be substituted, namely:

"4. The Commission will submit its report by the 31st day of August, 1972."

[No. 28(11)/70-OR.]

P. K. DAVE, Addl. Secy.

पैट्रोलियम और रसायन मंत्रालय

नई दिल्ली, 3 मार्च, 1972

एस० ओ० 878.—जांच आयोग अधिनियम, 1952 (1952 का 60) के खण्ड–3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस संबंध में (प्रदत्त) समस्त अन्य शक्तियों का समर्थन प्राप्त करते हुए, केन्द्रीय सरकार एतद्द्वारा निदेश देती है कि भारत सरकार के पैट्रोलियम तथा रसायन और खान तथा धातु मंत्रालय (पैट्रोलियम विभाग) के संकल्प संख्या 28(11)/70–ओ० आर० दिनांक 22 अगस्त, 1970 के, जिसका तत्पश्चात् संशोधन किया गया था, पैराग्राफ 4 के स्थान पर निम्नलिखित पैराग्राफ प्रतिस्थापित किया जायेगा; अर्थात् :—

"4. आयोग अपनी रिपोर्ट 31 अगस्त, 1972 तक प्रस्तुत करेगा।"

[संख्या 28(11)/70–ओ० आर०]

प्र० कु० दवे, अपर सचिव।

MINISTRY OF COMMUNICATIONS

(P. & T. Board)

New Delhi, the 6th March, 1972

S.O. 879.—In exercise of the powers conferred by clause (W) of Rule 2 of Indian Telegraph Rules, 1951, the Director General, Posts and Telegraphs declares that with effect from 15th April, 1972 the local area of following exchanges shall cover an area within a radial distance of 5 (Five) kilometers from the respective telephone exchange.

1. Srinagar.
2. Baramula.
3. Sopore and.
4. Anantnag.

[No. 3-36/70-PHB.]

PRATAP CHANDRA, Director of Phones (E).

संचार मंत्रालय

(डाक-तार बोर्ड)

नई दिल्ली, 6 मार्च, 1972

का० आ० 879 .—भारतीय तार नियम, 1951 के नियम 2 में खंड (डब्ल्यू) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए डाक-तार महानिदेशक घोषित करते हैं कि 15-4-72 से निम्नलिखित एक्सचेंजों के स्थानीय क्षेत्र के अन्तर्गत, सम्बद्ध टेलीफोन एक्सचेंज से 5 (पांच) किलोमीटर की अरीय दूरी का क्षेत्र आ जाएगा।

1. श्रीनगर
2. बारामूला
3. सोपोर
4. अनंतनाग

[सं० 3-36/70-पी०एच०बी०]

प्रताप चंद्र,

निदेशक फोन (ई)।

DELHI DEVELOPMENT AUTHORITY

PUBLIC NOTICE

New Delhi, the 18th March 1972

S.O. 880.—The following modification which the Central Government proposes to make in the zonal development plan for zones F-10 and F-16 (Malviya Nagar) is hereby published for public information. Any person having any objection or suggestion with respect to the proposed modification may send the objection or suggestion in writing to the Secretary, Delhi Development Authority, Delhi Vikas Bhawan, I.P. Estate, New Delhi within a period of thirty days from the date of this notice. The person making the objection or suggestion should also give his name and address:—

Modification

The right of way of 45.72 meters (150 ft.) wide proposed road connecting Mehrauli Road to village Madangir and passing to the north of Malviya Nagar and Chirag Delhi is proposed to be changed to 30.48 meters (100 ft.) width.

2. The plan indicating the proposed modification will be available for inspection at the office of the Authority Delhi Vikas Bhavan, I.P. Estate, New Delhi on all working days except Saturdays within the period referred to above.

[No. F.3(169)/67-MP.]

दिल्ली विकास प्राधिकरण

सार्वजनिक सूचना

नई दिल्ली 18 मार्च, 1972

एस० ओ० 880 .—केन्द्रीय सरकार जोन एफ 10 तथा एफ 16 (मालवीय नगर) के जोनल डवैल्पमैंट प्लानमें नीचे लिखा संशोधन करने का विचार कर रही है, इसे जनता की जानकारी के लिये प्रकाशित किया जा रहा है। इस संशोधन के संबंध में यदि किसी व्यक्ति को आपत्ति या सुझाव देना हो तो वे अपने आपत्ति और सुझाव इस ज्ञापन के 30 दिन के भीतर दिल्ली विकास प्राधिकरण के सचिव, दिल्ली विकास भवन, नई दिल्ली के पास लिख कर भेज सकते हैं। जो व्यक्ति अपनी आपत्ति या सुझाव दें वे अपना नाम तथा पूरा पता भी दें।

संशोधन

45.72 मीटर (150') चौड़ी प्रस्तावित सड़क जो महरौली रोड़ को गांव मदनगीर से मिलाती है तथा मालवीय नगर और चिराग दिल्ली के उत्तर से गुजरती है, उक्त मार्गाधिकार को 30.48 मीटर (100') में परिवर्तित करने का प्रस्ताव है।

2. शनिवार को छोड़कर और किसी भी कार्यशील दिन में दिल्ली विकास प्राधिकरण के कार्यालय, विकास भवन,, इन्द्रप्रस्ता इस्टेट, नई दिल्ली में उक्त अवधि में आकर संशोधन के मानचित्र का निरीक्षण किया जा सकता है।

[संख्या० एफ० 3 (169)/67-एम०पी०]

Notice under section 11 of the Delhi Development Act. 1957 (No. 61 of 1957).

S.O. 881.—Notice is hereby given that:—

(a) The Central Government have under sub-section (2) of section 9 of the Delhi Development Act, 1957 (No. 61 of 1957) approved the zonal development plan for zone B-6 (Patel Nagar area).

(a) A copy of this plan as approved may be inspected at the office of the Delhi Development Authority, Delhi Vikas Bhawan, 'D' Block, Indraprastha Estate, New Delhi between the hours of 11.00 A.M. and 3.00 P.M. on all working days.

[No. F. 4(11)/63-M.P.]

H. N. FOTEDAR, Secy.

दिल्ली डवैल्पमैंट एक्ट, 1957 (1957 की संख्या 61) की धारा 11 के अन्तर्गत सार्वजनिक सूचना।

एस०आ०ं 881.—सार्वजनिक सूचना निम्न प्रकार दी जाती है :—

(ए) केन्द्रीय सरकार ने दिल्ली डवैल्पमैंट एक्ट 1957 (1957 की संख्या 61) की धारा 9 की उप-धारा (2) के अन्तर्गत जोन बी-6 (पटेल नगर क्षेत्र) के जोनल डवैल्पमैंट प्लान को स्वीकृति प्रदान कर दी है।

(बी) किसी भी कार्यशील दिन के 11 से 3 बजे दोंपहर के दौरान दिल्ली विकास प्राधिकरण के कार्यालय विकास भवन, 'डी' ब्लाक, इन्द्रप्रस्थ इस्टेट, नई दिल्ली में आकर उक्त मानचित्र का निरीक्षण किया जा सकता है।

[संख्या एफ० 4(11)/63-एम०पी०]

एच० एन० फोतेदार, सचिव।

MINISTRY OF LABOUR AND REHABILITATION

(Department of Labour and Employment)

New Delhi, the 21st February 1972

S.O. 882.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment, known as Messrs A. K. Sirsar and Sons (6, Commercial Building, Ground Floor) 23, Netaji Subhas Road, Calcutta-1 have agreed that the provisions of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the first day of February, 1970.

[No. S. 35018(48)/71-PF.II.]

श्रम और पुनर्वास मंत्रालय

(श्रम और रोजगार विभाग)

नई दिल्ली, 21 फरवरी, 1972

का० आ० 882.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स ए० के० सरकार एण्ड सन्स (6—कमर्शियल बिल्डिंग, ग्राउंड फ्लोर) 23, नेताजी सुभाष रोड, कलकत्ता—1 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और कुटुम्ब पेंशन निधि अधिनियम 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किये जाने चाहिए;

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है।

यह अधिसूचना 1 70 की फरवरी के प्रथम दिन को प्रवृत्त हुई समझी जायेगी।

[सं० एस०—35018(48)/71—पी०एफ० 2]

S.O. 883.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment, known as Messrs Shirodkar and Sons, Empire Mahal, Dadar, Bombay-14 have agreed that the provisions of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall be deemed to have come into force on the thirty first day of October, 1969.

[No. S-35017(43)/71-PF.II.]

का० आ० 883.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स शिरोधकर एण्ड सन्स, एम्पायर महल, दादर, बम्बई-14 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और कुटुम्ब पेंशन निधि अधिनियम 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किये जाने चाहिए;

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है।

यह अधिसूचना 1969 के अक्तूबर के 31वें दिन को प्रवृत्त हुई समझी जायेगी।

[सं० एस०—35017(43)/71—पी०एफ० 2]

S.O. 884.—Whereas it appears to the Central Government that the employer and the majority of the employees in relation to the establishment, known as Messrs Shreyas Art Printers, Unit No. 103 and 104, A-Z, Industrial Estate, Ferguson Road, Bombay-13, have agreed that the provisions of the Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), should be made applicable to the said establishment;

Now, therefore, in exercise of the powers conferred by sub-section (4) of section 1 of the said Act, the Central Government hereby applies the provisions of the said Act to the said establishment.

This notification shall come into force on the thirty-first day of the December, 1971.

[No. S.35017(52)/71-PF.II]

का० आ० 884.—यतः केन्द्रीय सरकार को यह प्रतीत होता है कि मैसर्स श्रेयास आर्ट प्रिंटर्स, युनिट नं० 103 तथा 104, ए—जैड, इंडस्ट्रियल एस्टेट, फर्गसन रोड, बम्बई-13 नामक स्थापन से सम्बद्ध नियोजक और कर्मचारियों की बहुसंख्या इस बात पर सहमत हो गई है कि कर्मचारी भविष्य निधि और कुटुम्ब पेंशन निधि अधिनियम 1952 (1952 का 19) के उपबन्ध उक्त स्थापन को लागू किये जाने चाहिए;

अतः, अब, उक्त अधिनियम की धारा 1 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त अधिनियम के उपबन्ध उक्त स्थापन को एतद्द्वारा लागू करती है।

यह अधिसूचना 1971 के दिसम्बर के 31वें दिन को प्रवृत्त होगी।

[सं० एस०—35017(52)/71—पी०एफ० 2]

New Delhi, the 25th February 1972

S.O. 885.—In pursuance of clause (c) of sub-paragraph (1) of paravraph 4 of the Employees Provident Funds Scheme, 1952, the Central Government hereby appoints Shri Jagdish Chandra Sharma, as a member of the Regional Committee for the State of Rajasthan, and makes the following further amendment in the notification of the Government of India in the Ministry of Labour, Employment & Rehabilitation (Department of Labour & Employment) No. S.O. 3140 dated the 29th August, 1967, namely:—

In the said notification, against serial number 6, for the existing entry, the following shall be substituted, namely:—

"Shri Jagdish Chandra Sharma, Messrs New India Industrial Corporation, Jaipur South—Jaipur-6."

[No. 12(8)/67-PF.II.]

नई दिल्ली, 25 फरवरी, 1972

का० आ० 885.—कर्मचारी भविष्य निधि स्कीम, 1952 के पैरा 4 के उप-पैरा (1) के खण्ड (ग) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा श्री जगदीश चन्द्र शर्मा को राजस्थान राज्य के लिए क्षेत्रीय समिति का सदस्य नियुक्त करती है और भारत सरकार के श्रम, रोजगार और पुनर्वास मन्त्रालय (श्रम और रोजगार विभाग) की अधिसूचना संख्या का० आ० 3140 तारीख 29 अगस्त, 1967 में और आगे निम्नलिखित संशोधन करती है, अर्थात्

उक्त अधिसूचना में क्रम संख्या 6 के सामने की वर्तमान प्रविष्टि के स्थान पर निम्नलिखित प्रतिस्थापित किया जाएगा अर्थात्—

"श्री जगदीश चन्द्र शर्मा,
मैसर्स न्यू इण्डिया इंडस्ट्रियल कार्पोरेशन,
जयपुर साउथ,
जयपुर—6"

[सं० 12(8)/67-पी० एफ० II]

S.O. 886.—In exercise of the powers conferred by clause (a) of sub-section (i) of Section 17 of the Employees Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), the Central Government hereby cancels with immediate effect, the exemption granted to E.I.D. Parry Limited and Parrys Confectionery, Nellikuppam formerly known as, East India Distilleries and Sugar Factories Limited, Nellikuppam, under the said clause by the notification of the Government of India, in the late Ministry of Labour and Employment No. S.O. 2546, dated the 17th October, 1961.

[No. S. 35023(4)/71-PF.II.]

DALJIT SINGH, Under Secy.

एस० ओ० 886.—कर्मचारी भविष्य निधि और पेंशन निधि अधिनियम, 1952 (1952 का 19) की धारा 17 की उपधारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ई० आई० डी० पैरी लिमिटेड और पैरी कन्फैक्शनरी, नेलीकुपम, जिसे पहले ईस्ट इंडिया डिस्टिलरीज एंड शूगर फैक्टरी लिमिटेड, नेलीकुपम कहा जाता था, को उक्त खंड के अधीन भारत सरकार के भूतपूर्व श्रम और रोजगार मंत्रालय की अधिसूचना संख्या का०आ० 2546 तारीख 17 अक्तूबर, 1961 के द्वारा दी गई छूट को तुरन्त प्रभावी रूप से एतद्द्वारा रद्द करती है।

[सं० एस०-35023(4)/71-पी०एफ० II]

दलजीत सिंह,
अवर सचिव।

(Department of Labour and Employment)

New Delhi, the 4th March 1972

S.O. 887.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Industrial Tribunal, Bombay in the industrial dispute between the employers in relation to the New India Assurance Company Limited, Bombay and their workmen, which was received by the Central Governments as per item 2 above, an Employee cross

BEFORE SHRI N. L. ABHYANKAR, NATIONAL INDUSTRIAL TRIBUNAL, AT BOMBAY

REFERENCE (NT) No. 1 OF 1970

BETWEEN

New India Assurance Company Limited, Bombay

AND

The workmen employed under them.

In the matter of revision of scales of pay, fitment, dearness allowance, special increments, functional allowances, speical allowances, over-time etc.

APPEARANCES:

Shri Rajadhyaksha for the Union of India & the Custodian.

Shri N. V. Phadke, Advocate, with Shri Ginwalla, *for the New India Assurance Co.*

Shri H. K. Sowani, Advocate, *for the workmen.*

AWARD

This is a reference under Section 7B and sub-section (1a) of Section 10 of the Industrial Disputes Act, 1947, (XIV of 1947) made by the Central Government for adiudication of an industrial dispute between the New India Assurance Co. Ltd., Bombay and the workman employed under them which arises over the demands made by the workmen for revision of scales of pay, fitment, dearness allowance, special increments, functional and special allowances, overtime payment, leave facilities, provident fund, gratuity and pension scheme, direct recruitment and job specifications, promotion policy, interim relief etc.

2. At the hearing fixed on 11th February, 1972 the parties filed a settlement along with an application for an Award in terms of the settlement. I find the settlement is fair. I make an award in terms of the settlement annexed hereto and dispose of the reference. No order as to costs.

Bombay 16 February 1972. (Sd.) N. L. ABHYANKAR,
National Industrial Tribunal.

NAME OF PARTIES

Representing Employer—Shri B. K. Shah, Custodian, The New India Assurance Co. Ltd., Bombay.

Representing workmen—Shri R. P. Singh, General Secretary, The All India Federation of The New India Assurance Co. Ltd. Employees' Unions, Bombay.

Short Recital of the Case

Whereas The All India Federation of The New India Assurance Company Limited Employees' Unions, Bombay, presented a Charter of Demands to the then Managing Director of The New India Assurance Company Limited Bombay on the 10th July 1969.

And whereas, on failure of the negotiations, the Government of India, in exercise of the powers conferred under the Industrial Disputes Act, 1947 (14 of 1947) by its Order dated the 24th March 1970, referred the dispute on the said Charter of Demands for adiudication to a National Industrial Tribunal of Shri N. L. Abhyankar, Bombay;

And whereas, pursuant to discussions, the parties have now arrived at the following settlement (hereinafter referred to as "The Settlement");

Terms of Settlement

It is hereby agreed by and between the Parties hereto as follows:

1. All the provisions of the Memorandum of Settlement dated 26th October, 1966 (Appendix 'A' hereto

and referred to hereinafter as the "1966 Settlement"), arrived at between The All India Federation of the New India Assurance Company Limited Employees' Union, Bombay, and The New India Assurance Company Limited, Bombay, shall continue to be effective, unaltered, except as specifically provided herein below:

2. (i) The existing salary, increments, efficiency bars, span of scales etc. as per Item No. 1 of the 1966 Settlement will remain unaltered. There will be no changes in the existing grades. The Minima and Maxima of the grades shall also remain unaltered.

(ii) The employees will be eligible to receive incremental adjustments in their existing grades on the following basis and conditions of eligibility set out hereinafter below:—

Grade	Period of service in the grade as on 30th June 1969 (years)	No. of increment/s
Sub-staff	Upto 10 years	5
	Above 10 years	6
Drivers	Upto 10 years	4
	Above 10 years	5
Record Clerks	Upto 10 years	4
	Above 10 years	5
'B' & Assistant Inspectors	Upto 3 years	2
	Above 3 years but upto 10 years	3
	Above 10 years	4
'A' & 'AS'	Upto 10 years	2
	Above 10 years	3
'SA'	Upto 5 years	1
	Above 5 years but upto 10 years	2
	Above 10 years	3

(iii) In the case of employees whose revised Basic Salary exceeds the ceiling of their respective grades by application of the incremental adjustments as per 2(ii) above, such excess will be treated as Personal Pay. This Personal Pay shall attract all benefits such as Dearness Allowance, Provident Fund, Bonus, Gratuity, etc., as if it were a part of basic salary.

(iv) While granting incremental adjustments as per 2(ii) above, marginal adjustments would be granted to those employees who have received promotions to higher grades *i.e.* to Record Clerks, 'B', 'A', 'AS' and 'SA' grades on or before 30th June 1969 so that the increase consequent upon the incremental adjustments as per 2(ii) above shall not be less than what they would have otherwise received had they not been promoted. This increase will first be adjusted towards Basic Salary to the extent possible in their promoted grades existing as on 30th June 1969. The balance left, if any, after this adjustment shall be treated as Personal Pay and this Personal Pay shall attract all benefits such as Dearness Allowance, Provident Fund, Bonus, Gratuity etc. as if it were a part of Basic Salary.

(v) Normal increments in Basic Salary received for the years 1970 and 1971 and due for 1972 and *Ad-hoc* increments already received or due will not be set off against incremental adjustments received under items 2(ii) and 2(iii) above. Any excess beyond the ceiling of the existing grades will be treated as Personal Pay and this Personal Pay shall attract all benefits such as Dearness Allowance, Provident Fund, Bonus, Gratuity etc. as if it were a part of Basic Salary.

(vi) Should by reason of the incremental adjustments as per item 2 above, an Employee cross the Efficiency Bar applicable to his grade, such efficiency bar shall be considered to be notionally increased to his adjusted basic salary as per item 2 above, and the question of granting him an increment in his basic salary for the year commencing 1st January 1972 will be considered by the Company as per its present practice.

(vii) Financial benefits accruing out of this Settlement as per Items 2(ii), 2(iii) and (iv) above will be payable with retrospective effect from the 1st July 1969 to all eligible employees provided that there will be no such retrospective effect in the matter of Overtime, Halting Allowance and Transfer Allowance.

(viii) *Eligibility for item 2(ii).*—All employees who were confirmed in the Company's service as on 30th June 1969 or were on probation in the Company's service as on 30th June 1969 and subsequently confirmed will be eligible to receive the increments as per item 2(ii) above.

3. *New Recruits.*—Those who joined the Company's regular service on or after 1st July 1969 would not be eligible for incremental adjustments etc. on the basis of item 2 above, but will be eligible to receive only an ad-hoc Special Allowance, with effect from their date of confirmation, on the following basis, provided they are in the service of the Company on the date of signing this Settlement:—

Grade	*Special Allowance per month*
Sub-staff	Rs. 20/-
Drivers, Record Clerks, 'B', Assistant Inspectors, 'A' & 'AS', 'SA'	Rs. 35/-

This Special Allowance would be taken into account for the purpose of Provident Fund and Gratuity only and will not be so taken into account for any other purpose whatsoever.

4. Illustrative cases of the basis set out above are given in Appendix 'B' hereto for the purpose of clarification.

5. *Extra Special Allowance.*—The following ad-hoc Special Allowance will be granted, with effect from 1st July 1971, only to those employees who were in the Company's service either as confirmed employees as probationers as on 30th June, 1969 and who are in Company's service on the date of signing this Settlement:—

Basic Salary P.M. as at 1-7-1971	*Extra Special Allowance P.M.*
Upto Rs. 200	Rs. 20
Rs. 201 to 350	Rs. 25
Rs. 351 to 500	Rs. 30
Rs. 501 and above	Rs. 35

This Special Allowance will be treated as Personal Pay and would be taken into account for the purpose of Provident Fund and Gratuity only and will not be so taken into account for any other purpose whatsoever.

6. *Leave.*—The Leave Rules of the Company will remain unaltered except as specifically set out herein below, which amendments will be effective from the 1st January 1972.

(a) *Casual Leave.*—The existing provisions in 1966 Settlement relating to Casual Leave shall stand deleted and the provisions with regard to Casual Leave and working hours that existed immediately prior to the signing of the 1966 Settlement shall be restored with effect from 1st January 1972. The said provisions are set out in Appendix 'C' hereto.

(b) *Sick Leave.*—In respect of Sick Leave, present rules will continue. Accumulation of sick leave will be 240 days as at present, with a further provision that the aggregate sick leave that could be availed of during the entire period of service after 1st January, 1972 shall not exceed 12 months. It is understood that sick leave availed of prior to 1st January, 1972 shall not be taken into account for the purpose of calculating the above ceiling of 12 months.

7. *Duration of Settlement.*—This Settlement shall take effect from 1st July, 1969 except in those cases in which other dates are specifically provided hereinabove and shall remain in operation for a period of one year from the date on which the award of the National Industrial Tribunal which may be made in terms of this Settlement become enforceable, subject to the provisions of the Industrial Disputes Act 1947.

8. *Applicability.*—This Settlement will be applicable to all administrative staff of the Company who were in the service of the Company as on 30th June 1969 or thereafter, as provided above. It is not applicable to temporary or part-time employees.

9. *Other terms and conditions.*—(i) All the demands which are the subject matter of the dispute in Reference No. NT(1) of 1970 before the National Industrial Tribunal of Shri N. L. Abhyankar, Bombay, shall be deemed to have been settled by this Settlement.

(ii) The parties shall make an application to the National Industrial Tribunal in Reference No. NT(1) of 1970 requesting it to make an Award in terms of this Settlement.

In witness hereof the parties have hereto set their hands at Bombay this Twentieth day of January, 1972.

Signature of Witnesses :

Sd/-
Witness
(I. R. MEHTA)

Sd/-
Witness
(K. M. A. PILLAI)

Signature of Employer's Representative

Sd/-
(B. K. SHAH),
Custodian
the New India Assurance Company Limited, Bombay.

Signature of Employes' Representative

Sd/-
(R. P. SINGH),
General Secretary
The All India Federation of the New India Assurance Company Limited Employees' Union, Bombay.

Delhi, 8th February, 1972

For & On behalf of Union of India

Witness : Sd/-
(D. V. N. RAO)

Sd/-
(M. K. VENKATESHAN)
Joint Secretary,
Ministry of Finance,
New Delhi

APPENDIX 'A'

Memorandum of Settlement

BETWEEN

The All India Federation of the New India Assurance Co., Ltd. Employees' Unions, Bombay.

(*Regd. No.* 1822)

AND

The New India Assurance Co., Ltd. Bombay.

Dated 26th October 1966

Repesenting the Employer:

Shri B. K. Shah

(The New India Assurance Company Ltd.) Managing Director,

The New India Assurance Company Ltd.

Representing the Workmen:

Shri B. R. Kanthra

(The All India Federation of New India Assurance Co. Ltd., Employees' Unions)

Vice President, All India Federation of New India Assurance Co. Ltd., Employees' Unions.

Shri K. Bharathan

General Secretary, All India Federation of New India Assurance Co. Ltd., Employees' Unions.

Address:—

New India Assurance Building,
Mahatma Gandhi Road,
BOMBAY-1

Preamble:

Short Recital of the Case

Whereas the All India Federation of the New India Assurance Company Limited Employees' Union presented a Charter of Demands to the Managing Director of the New India Assurance Company Limited on the 15th December, 1965, copy attached herewith at Appendix 'B';

And whereas the All India Federation and the Managing Director on behalf of the New India Assurance Company Limited have come to a settlement in order to create goodwill and ensure sincere co-operation between the Management and the workmen;

Now, therefore, this indenture witnesseth the terms of settlement as follows:—

GRADES:

Item No. 1—Revised Salary Scales—Common to all offices of India:

'B' Grade

Existing Scales:	*Settlement*
Rs. 85-8-125-10-225-EB-15-360 (24 years)	Rs. 170-8-210-10-310-EB-15-385-20-465 (24 yrs.)

Assistant Inspector's Grade

Rs. 100-7-121-10-161-13-200-EB-15-275-25-400 (20 years)	Rs. 185-7-206-10-246-13-285-EB-15-360-25-510 (21 yrs.)

Grade

Rs. 140-10-200-EB-15-203-20-440 (20 years)	Rs. 225-10-285-EB-14-405-20-445-25-545 (20 years)

'AS' Grade

Rs. 140-10-200-EB-15-320-20-460 (21 years) Rs. 225-10-285-EB-15-405-20-445-25-570 (21 years)

'SA' Grade

Rs. 270-20-330-EB-25-430-30-550 (11 years) Rs. 355-20-415-EB-25-515-30-665 (12 years)

Record Clerk's Grade

Rs. 60-5-110-EB-6-170 (20 yrs.) Rs. 145-5-195-EB-6-237-8-261 (20 years)

Driver's Grade

Rs. 70-5-105-EB-6-165(17 yrs.) Rs. 140-5-175-EB-6-235-7-25 (20 years)

Sub-Staff Grade

Rs. 40-2-54-3-75-5-120 (23 yrs.) Rs. 110-3-146-4-150-5-200 (23 years)

Item No. 1(A)—Recruitment:

Normally, recruitment shall be confined to 'B' Grade and Sub-Staff grade only. However, where the job requires more technical knowledge, qualifications and/or experience, the Management may resort to direct recruitment.

'Probationary' appointments shall be made on the basis of 2 months' initial training before being posted in a Department, and then 6 months period of probation. A consolidated allowance of Rs. 200 p.m. will be paid during the period of training.

'Temporary' appointments will be made subject to necessity, and shall normally be upto a period of 3 months, and in exceptional cases not exceeding 6 months.

Item No. 1(B)—Job Specification:

As on experimental measure, the allocation of functions of various categories in various departments will be tried out first in selected departments at H.O., such as Tied Business, Bombay City Organisation and Claims. Thereafter, a report will be made by 30th June 1967, to the Managing Director for this consideration.

Item No. 2—Special Increments:

(i) The present practice of giving two additional increments to Graduate assistants in 'B' Grade to continue.

(iii) The present practice of giving one additional increment to Comptists from the date of appointment, and one additional increment to Telephone Operators on confirmation, according to experience to continue.

(iv) The present practice of giving three additional increments to Stenotypists in 'B' Grade to continue.

(v) (c) On passing the A.C.I.I. Examination, employees in 'B' Grade will be promoted to 'A' Grade, as hitherto. If already in 'A' grade, one additional increment shall be given in the grade.

On passing the A.F.I.I. Examination, employees in 'B' grade shall be given two additional increments in their grade, and those in 'A' grade, shall be given one additional increment in the grade.

(vi) (c) On passing the F.C.I.I. Examination, one additional increment in the grade plus Rs. 250 as a Cash Award shall be paid to employees in 'A' Grade and 'SA' Grade.

On passing the F.F.I.I. Examination, one additional grade increment shall be given to employees in 'A' Grade and 'B' Grade, and a cash award of Rs. 250 shall be given for employees in the 'SA' Grade.

(viii) *Incentive increment on reaching the ceiling of the grade.*

The Management agree that employees who are of better than average ability in their grade, have a satisfactory record of service, and are recommended by their Heads of Departments, may, at the sole discretion of the Managing Director, be granted a further ad hoc increment every 2 years, upto a maximum of 3 such increments.

Item No. 3—Allowances:

(a) *Dearness Allowance:*

Dearness Allowance shall be payable in accordance with the scale given at Appendix 'A'. This scale includes the benefit of ten points anticipatory increase in the All India Consumer Price Index and, in the event of any recommended increase in this index by any Dearness Allowance Commission or Committee, with a view to correcting the published index, no further consequent increase shall be given upto the first ten points or less.

The above D.A. Scale will be revised in accordance with the scale shown in Appendix 'A' when the All India Consumer Price Index goes below 161 or above 165.

In future, the difference in D.A. due to the fluctuating index shall be adjusted once in three months only.

(b) *House Rent Allowance:*

House rent allowance shall be paid on the following basis:—

Sub-Staff/Drivers:

Rs. 9 at places with population of less than 2 lacs; Rs. 11 at places with population of above 2 lacs but less than 10 lacs, and Rs. 13 with population of 10 lacs and above.

Others

Population 10 lacs and above		Population 2 to 10 lacs		Population less than 2 lacs
Min. Rs. 17	Max. 30	Min. 14	Max. 25	Nil
Basic (Rs.)				
Upto 200 Rs. 17 (Min.)		Upto 200 Rs. 14 (min.)		
Next 201—		Next 201—		
400—4 %		400—3%		
Next 401—		Next 401—		
600—2·5%		600—2·5%		

*In the case of certain cities like Chandigarh, Panjim etc., where the high cost of living causes hardship, even if the population is less than 2 lacs the Management will consider admitting H.R.A. on the same scale as for cities with a population of 2—10 lacs.

H.R.A. would not be payable to those employees provided with accommodation by the Company, to those in receipt of Rent Compensatory Allowance, or to those in receipt of low rent housing facility. Where an employee may be entitled to H. R. A. as well as R. C. A. or other equivalent housing benefit, he will be entitled to ask for one such benefit only, whichever is the greatest.

(d) *Special Allowances:*

1. *Head Peons:*

Head Peons in the sub-staff grade in Bombay, Delhi, Madras, Calcutta and Kanpur will be paid an allowance of Rs. 10 per month. Head Peons at other places, if sanctioned by the Head Office and appointed, will be paid an allowance of Rs. 5 p.m. only.

Selection of Head Peons shall be made from the senior sub-staff who are not otherwise eligible for the post of Record Clerk.

2. *Watchmen, Liftmen, Post Carrying Peons and Delivery Peons:*

Full time regular Watchmen at the Head Office, Regional Offices and Kanpur shall be paid an allowance of Rs. 10 p.m.

Full time Liftmen shall be paid an allowance of Rs. 10 p.m.

Regular Delivery Peons at H. O., who deliver at least 75 letters per day and regular Delivery Peons at Regional offices and one each at D. Os. at regional centres and Kanpur, who cover a distance of 4 miles a day and over, would be given an allowance of Rs. 5 per month.

3. *Typists and Punch Operators:*

Regular typists with a minimum of 5 years service as a typist as on 1st January 1966 or on attaining a minimum of 5 years service as a typist, will be paid an allowance of Rs. 10 per month. However, in case of typists who cease to be typists or who are proved to be below a reasonable standard, this allowance may be withdrawn. Decisions on such withdrawals will be taken in consultation with the Federation, and will be authorised by H. O. only.

Punch Operators will be paid an allowance of Rs. 15 p.m.

4. *Heavy Machine Operators:*

Heavy Machine Operators in the Machine Department shall be given an allowance of Rs. 25 p.m.

5. *Cash Carrying Peons:*

The present allowance of Rs. 5 per month to Cash Carrying Peons at H.O., R.O., and at Kanpur shall be increased to Rs. 7 per month. The number of such Peons should not exceed two at H.O. and one each at R. Os. and O. B. S./D. Os. at Regional Centres and Kanpur.

Peons required to do the job casually or occasionally would not be eligible for this allowance. If, in future, at other centres or offices a case is established for the payment of this allowance, it will be paid at the rate of Rs. 5 per month only.

6. *Assistant Dealing with Cash:*

The present allowance of Rs. 10 per month to assistants dealing with cash at H.O./R.Os. and Kanpur shall be increased to Rs. 15 per month. As at present, the number of such Assistants shall not exceed two at H. O. and one each at Regional Offices and O.B.S./DOs. at regional centres and Kanpur.

Assistants required to do this work casually or occasionally would not be eligible for this allowance. If, in future, a case is established for the payment of this allowance at other centres or offices, it will be paid at the rate of Rs. 10 per month only.

7. *P. A. to Manager:*

P.As. attached to top executives at H.O. and R.Os. who are frequently required to put in extra hours of work, will be given an allowance of Rs. 25 per month, on the recommendation of the Executive and the approval of H. O.

(e) *Officiating Allowance:*

The staff will not be asked to officiate in the higher grade posts.

(f) *Hill Station Allowance:*

The present practice of giving a hill station allowance to be extended from November 1966 to a few selected places located at a height of 5,000 ft above sea-level and over, and will also include Shillong.

(g) *Transfer and Halting Allowance:*

The Travelling Rules in force from time to time shall apply.

However, any case of hardship pointed out would be considered.

Halting Allowance will be paid according to the revised rates effective from 1st September 1966. However, for Audit Assistants and Claims Inspectors a minimum halting allowance of Rs. 15 per day will be paid with effect from 15th October 1966.

If an employee is transferred at his own request, no transfer allowance or R.C.A. shall be payable.

An employee on transfer may, at the discretion of this Company, be granted a transfer allowance not exceeding 3 months' basic pay or Rs. 1,000 whichever is less. Transfer allowance is not payable on the first posting.

Subject to an employee first contributing 15 per cent of basic salary towards rent on transfer, the Company may grant R. C. A. not exceeding 15 per cent of basic salary on transfer. An employee may elect to take either transfer allowance or R. C. A., but not both. R. C. A. is not payable on first posting. Extreme cases of hardship will be considered, when referred to.

In the case of employees in receipt of R. C. A. at the time of signing this agreement, the Management agrees to maintain the *status quo* in respect of the Company's and the employees' respective contributions towards rent in terms of amounts.

Item No. 4—Overtime:

Overtime payment shall be made as at present, as per the provisions of the local Shops and Establishments Acts. However, the Company agrees that from the date of signing the agreement, organised overtime sanctioned in advance in writing will be paid at 1-1|2 times the single rate.

Item No. 5—Bonus:

Bonus payment will depend on the Company's profits of the year, and will be fixed annually by the Board of Directors.

Item No. 6—Leave:

(a) *Casual Leave.*—Present rules to continue, subject to new clause at item 15(a).

(b) *Privilege Leave.*—In respect of earning privilege leave, the present rules to continue. Privilege leave may be accumulated upto 100 days, with effect from the date of signing this agreement. A maximum of 75 days privilege leave, including encashment and actual leave, may be granted at a time, or during the course of a calendar year. However, out of these 75 days, maximum encashment of leave shall be 30 days and maximum actual leave shall be 60 days.

In respect of Sundays and Holidays, the present practice to continue.

(c) *Sick Leave.*—In respect of earning of sick leave, present rules to continue.

If an employee has not availed of sick leave in earlier years, thereby forfeiting it, and if his sickness continues beyond the period of leave due in accordance with the rules, he may, in special cases, on being certified by a consulting physician/surgeon approved of by the Company, be granted additional sick leave upto a maximum of 4 months.

(d) *Maternity Leave*:

A married female employee who has been confirmed in the services of the Company shall be granted maternity leave with full pay for 12 weeks, to be taken preferably 6 weeks before confinement and 6 weeks after confinement, and the birth of the child, certified by registered medical practitioner, should be notified to the company.

Normally, Maternity leave shall not be granted in conjunction with sick leave. However, in cases of genuine hardship, the Management at its discretion may make an exception.

Maternity leave will be granted upto a maximum of three times during the total period of service of the employee in the Company.

(f) *Trade Union Leave*:

Trade Union Leave calculated at the rate of 6 days in a year for 2 per cent of the workmen shall be granted in a calendar year. This leave will be granted only on the recommendation of the Federation.

Item No. 7—Encashment of Privilege Leave:

A maximum of 30 days privilege leave may be encashed in one calendar year as per existing rules The minimum amount of privilege leave which may be encashed at a time is 12 days and encashment will not be permitted more than twice in a calendar year.

Item No. 8—Free Medical Facilities:

Present benefits to continue.

Item No. 9—Retiring Age:

The present retirement age of 60 years to continue.

Item No. 10—Provident Fund:

The present rate of P.F. contribution to continue, but on the revised basic salaries.

Item No. 11—Gratuity:

Present practice to continue.

Item No. 12—Adjustment and Fitting in:

To the basic salaray as on 1st January 1966, Rs. 70 shall be added in the case of Sub-Staff/Drivers, and Rs. 85 for others, and fitted into the new grades.

Anamolies arising in respect of those previously covered by the mofussil grades will be rectified, to the extent that the existing personnel will not get less than a new man in a similar position. Their pay as on 1st January 1966 will be higher by at least one increment more than the new staff recruited in 1966.

Item No. 13—Promotion Policy:

The Administrative Advisory Council shall examine the question of promotion policy at an early date, and the decision of the Management in respect of this will be given before the 31st January, 1967.

Item No. 14—Participation in the Management:

Present practice to continue.

Item No. 15—Miscellaneous:

(a) *Holidays*:

The Company shall observe all public holidays declared at the beginning of the year by the respective State Governments under the Negotiable Instruments Act, except 30th June and 31st December.

At present Calcutta city and Delhi city are enjoying the benefit of holidays on the 30th June and 31st December, and Madras city is enjoying 12 days Casual Leave as opposed to 10 days Casual Leave granted by the Company elsewhere throughout India.

For the purpose of achieving uniformity, the following new procedure will be put into effect in future:

(a) In Bombay city, working hours will be increased from 36 hours to 36-1/4 hours per week, thereby making an addition of 13 hours approximately per annum. In lieu of this, 2 extra days Casual Leave will be permitted in future.

(b) In Madras State, where 12 days Casual Leave are being enjoyed at present, there shall be no change.

(c) In Calcutta and Delhi cities, the status quo will be observed and 30th June and 31st December shall be enjoyed as holidays at in the past. If at a future date, these are no longer declared as holidays in these cities, they also, like Bombay, may be permitted 2 days Casual Leave, provided they work 15 minutes extra each week.

(d) At all other places in India, if 30th June and 31st December are not observed as Holidays, 2 days extra casual leave will be allowed, provided the working time is increased by 15 minutes per week. The adjustment will be carried out as convenient to the regions.

The above will be effective from 1st January, 1967.

Any public holidays declared by the Government in the course of the year will not be automatically applicable, but in respect of these holidays, the Company will be guided by the practice in other leading commercial establishments.

Out of the non-mandatory holidays, declared at the beginning of the year, two alternative holidays in lieu of two existing ones may be named at the beginning of the year, to be observed as holidays in the Company.

Such holidays shall not be applicable to employees on special duty, to drivers and to watchmen. Drivers and Watchmen shall be given five specified holidays in a calendar year, or overtime payment in lieu thereof with effect from 1st January 1967.

(b) *Early going and late coming concession*:

All communities will be permitted an early leaving/late arriving concession on certain selected religious occasions, which are not public holidays and will be defined at the beginning of the year. In this connection Hindus will be granted 10 hours early leaving/late arriving concession per year, and other communities 6 hours each per year. This will be effective from 1-1-1967.

(c) *Record Clerks*:

Record Clerks' functions shall be mainly clerical in nature. They will not be required to wear uniforms and their office timings shall be the same as for clerical staff. This will be with effect from the date of signing this agreement.

The above will not be applicable to such Record Clerks who are Head Peons and peons attached to Top Executives or doing specified Peon's duties, who will continue as hitherto. They will be given a chance to work as Record clerks subject to suitability and vacancy.

(d) *Uniform to Sub-Staff*:

The present practice to continue. Existing facility of giving winter uniforms shall be extended to a few additional selections, e.g. Poona, Nagpur and Bangalore.

(e) *Change over to clerical work*:

Management may consider such cases, after training in the Training Department and on satisfactory performance in tests and interviews, and subject to vacancy.

(f) *Festival advances*:

A festival advance of Rs. 50 to Sub-Staff/Drivers and Rs. 100 to other Staff upto 'SA' grade may be granted once only in a calendar year, on one of two agreed festivals for each community, from a special Imprest account to be maintained with the Mutual Benefit Society. Such advances shall be recovered in two instalments, from pay for the next two months.

(g) *Leave Substitutes*:

For assistants proceeding on leave for 30 days or more, leave substitutes may be sanctioned in writing by H. O. Such sanction should be obtained well in advance.

(h) *Free P. A. Policy*:

Present practice to continue, on the basis of the revised basic salary.

(i) *Preference to Employees' Children*:

Subject to suitability, training, test results and vacancy, employees' sons may be given preference in the matter of employment.

(j) *Scooters for out-door staff*:

May be considered by the Management wherever the job necessitates.

(k) *Loan for vehicles etc*:

The Management would consider a suitable scheme, with Hire Purchase or Credit societies if put up by the Federation.

Item No. 16- *Existing privileges and amenities*:

All existing rights, benefits and privileges shall continue as before.

Item No. 17—*period of Agreement*:

This Agreement shall take effect from 1st January 1966 and shall remain in force upto 30th June 1969. It will be applicable to all the Administrative Staff of the Company, who were in the services of the Company on 1st January 1966 or thereafter. It is not applicable to temporary or part-time employees.

However, financial benefits accruing out of this agreement will be payable with effect from 1st January 1966 except in the case of past payment for overtime, halting allowance and transfer allowance, in respect of which there shall be no retrospective effect.

It is understood that in the event of any situation resulting in material changes affecting the living conditions of the employees, the Management will consider the situation sympathetically.

Any dispute as to the interpretation of any of the clauses of this settlement will be resolved by mutual discussions.

Signature of witnesses : *Signature of the Employer's representative* :

1. Sd/- R. M. DESAI — Sd/- B. K. SHAH

Signature of the All India Federation of New India Assurance Co. Ltd. Empolyees' Unions'.

2. Sd/- K. C. SETH — 1. Sd/- B. R. KANTHRA

3. Sd/- V. S. KETKA — 2. Sd/- K. BHARATHAN

Bombay 26th October 1966.

Appendix 'A'—D.A. Scale

(For All India Consumer Price Index 161—165)
1949-100

For Sub-Staff/Drivers :		For others :	
Basic	D.A.	Basic	D.A.
Rs.	Rs.	Rs.	Rs.
1—68	Flat Rs. 38	1—80	Flat Rs. 28
69—118	45%	81—130	45%
119—168	95%	131—180	95%
169—268	47·5%	181—280	47·5%
		281—430	31·25%
		431—580	27·25%
		581—665	10%

Maximum D.A. Rs. 400/-

For every 5 points increase in the All India Consumer Price Index from 161 or decrease from 165 i.e. when it exceeds 165 or falls below 161, the above D.A. shall be increased/decreased as under :—

Basic Salary (Rs.)	Percentage
1-100	5%
101-200	2·5%
201-500	1·25%

In the case of a fall of each 5 points in the All India Consumer Price Index below 165, the calculation of the consequent decreased D.A. shall be made in respect of new basic salaries, less Rs. 68/- in the case of Sub-Staff and Drivers, and Rs. 80/- in the case of other staff. But, so long as the said index does not fall below 161, the calculation of the consequent decreased D. A. shall be made in respect of the full new basic salaries.

APPENDIX 'B'

Illustrative Cases

Item 4 of the Settlement

Grade	Date of Joining	No. of years service in the grade as on 30-6-1969 (Yrs/Mths/Days)	No. of increments available in the grade	Assumed Basic Salary in the Grade as on 30-6-69	Eligible for increase	Revised Basic Salary with effect from 1-7-69
				Rs.	Rs.	Rs.
Illustration under Item No. 2(ii) :						
'B'	20-11-57	11 7 10	4	290	50	Basic Rs. 340/- in 'B' Grade.
Illustration under Item No. 2 (iii) :						
(i) 'B'	16-4-45	24 2 14	4	425	80	Basic Rs. 465/- (ceiling) in 'B' Grade. Personal Pay Rs. 40/-
(ii) 'B'	16-4-43	26 2 14	4	465 (ceiling)	80	Basic unaltered at Rs. 465/- in 'B' Grade. Personal Pay Rs. 80/-
Illustration under Item No. 2(iv) :						
Date of Joining 'B'	17-10-55	13 8 13	4	325*	60	
Promotion to 'A'	1-7-60	9 0 0	2	345**	30	
Promotion to 'SA'	1-6-67	2 1 0	1	395	20	Eligible for increase of Rs. 60/- Hence Basic Rs. 440/- in 'SA'. Grade i.e. Rs. 395+ Rs. 45 in Basic. Balance Rs. 15/- as Personal Pay.

*If the employee was to continue in 'B' Grade since his joining the Company on 17-10-55—viz. had he not been pomoted to A/SA Grades—, his Basic Salary in 'B' Grade as on 30-6-1969 would have been Rs. 325, and would have been eligible to receive Rs. 60/- under Item 2(ii).

**If the employee was to continue in 'A' Grade since his promotion to 'A' w.e.f. 1-7-60—viz. had not been promoted to 'SA' Grade—, his basic salary in 'A' Grade as on 30-6-1969 would have been Rs. 345/- and would have been eligible to receive Rs. 30/- under Item 2(ii).

SALARY

As on	Old assumed	Revised	
	Rs.	Rs.	
Illustrations under Item No. 2(v) :			
(i) Employee who is in 'B' Grade and has completed more than 10 years service in 'B' Grade as on 30-6-1969 and whose basic salary was Rs. 406 in 'B' Grade as on 30-6-1969.			
30-6-69	Basic 405	Basic 465(Ceiling) and	Personal Pay Rs. 20 (1-7-69). (Eligible for increase of Rs. 80, out of which Rs. 60 will be in basic. Balance Rs. 20 as Personal Pay).
1-1-70	Basic 425	Basic 465(Ceiling) and	Personal Pay Rs. 40, including grade increment as from 1-1-70.
1-1-71	Basic 445	Basic 465(Ceiling) and	Personal Pay Rs. 60, including grade increment as from 1-1-71.
1-1-72	Basic 465(Ceiling)	Basic 465(Ceiling) and	Personal Pay Rs 80, including grade increment as from 1-1-72.

SALARY

As on	Old assumed	Revised
	Rs.	Rs.

(ii) Employee who is in 'B' Grade and has completed more than 10 years service in 'B' Grade as on 30-6-69 and whose basic salary was Rs. 445 in 'B' Grade as on 30-6-69 and who was eligible for *ad-hoc* incentive increment of Rs. 20 as on 1-1-72* as per Item 2(viii) of Appendix 'A'**.

30-6-69	Basic 445	Basic 465(Ceiling) and	Personal Pay Rs. 60 (1-7-69). (Eligible for increase of Rs. 80, out of which Rs. 20 will be in basic. Balance Rs. 60 as Personal Pay).
1-1-70	Basic 465(Ceiling)	Basic 465(Ceiling) and	Personal Pay Rs. 80, including grade increment as from 1-1-70.
1-1-71	Basic 465(Ceiling)	Basic 465(Ceiling) and	Personal Pay Rs. 80/-
1-1-72	Basic 465(Ceiling)+Basic 20 (*Ad-hoc* incentive increment, if granted*).	Basic 465(Ceiling) and +Basic 20 (*Ad-hoc* incentive increment, if granted*).	Personal Pay Rs. 80/-

(iii) Employee who is in 'B' Grade and has completed more than 10 years service in 'B' Grade as on 30-6-69 and whose basic salary was Rs. 465 in 'B' Grade as on 30-6-69 and who was eligible for *ad-hoc* incentive increment of Rs. 20 as on 1-1-71*, as per item No. 2 (viii) of Appendix 'A'**.

30-6-69	Basic 465(Ceiling)	Basic 465(Ceiling) and	Personal Pay Rs. 80 (1-7-1969). (Eligible for increase of Rs. 80. Basic unaltered at Rs. 465. Personal Pay Rs. 80).
1-1-70	Basic 465(Ceiling)	Basic 465 (Ceiling) and	Personal Pay Rs. 80.
1-1-71	Basic 465(Ceiling)+Basic 20 (*Ad-hoc* incentive increment, if granted*).	Basic 465 (ceiling) and +Basic 20 (*Ad-hoc* incentive increment, if granted*).	Personal Pay Rs. 80.

(iv) Employee whose in 'B' Grade and has completed more than 10 years Service in 'B' Grade as on 30-6-69 and whose basic salary was Rs. 465/- (ceiling) as on 30-6-69 and who was in receipt of one *ad-hoc* incentive increment as on 30.6.69 and who was eligible for *ad-hoc* incentive increment of Rs. 20/- as on 1-1-71*, as per item 2(viii) of Appendix 'A'**.

30-6-69	Basic 465(Ceiling)+Basic 20 (*Ad-hoc* incentive increment).	Basic 465(Ceiling) and +Basic 20 (*Ad-hoc* incentive increment).	Personal Pay Rs. 80 (1-7-69).
1-1-70	Basic 465(Ceiling) +Basic 20 (*Ad-hoc* incentive increment as on 30-6-69.	Basic 465(Ceiling, and +Bisic 20 (*Ad-hoc* incentive increment as on 30-6-69).	Personal Pay Rs. 80.
1-1-71	Basic 465(Ceiling)+Basic 20 (*Ad-hoc* incentive increment as on 30-6-69) +Basic 20 (*Ad-hoc* incentive increment, if granted, with effect from 1-1-71*).	Basic 465(Ceiling) and +Basic 20 (*Ad-hoc* incentive increment as on 30-6-69) +Basic 20 (*Ad-hoc* incentive, increment, if granted with effect from 1-1-71*).	Personal Pay Rs. 80.

(v) Employee who is in 'SA' Grade and has completed more than 10 years service in 'SA' grade and whose basic salary was Rs. 665/- as on 30-6-69 and who is eligible for one *Ad-hoc* incentive increment of Rs. 30/- as on 1-1-71*, as per item 2(viii) of Appendix A'**.

30-6-69 Basic 665/- (Ceiling)	Basic 665/- (ceiling) and Personal Pay Rs. 80/- (1-7-69). (Eligible for increase of Rs. 90/- Basic unaltered at Rs. 665/-. Personal Pay Rs. 90/-).
1-1-70 Basic 665/- (Ceiling)	Basic 665/- (ceiling) and Personal Pay Rs. 90/-.
1-1-71 Basic 665/- (Ceiling) +Basic 30/- (*Ad-hoc* incentive increment, if granted*).	Basic 665/- (ceiling) and Personal Pay Rs. 90/-. +Basic 30)- (*Ad-hoc* Incentive Increment if granted*).
1-1-72 Basic 665/- (Ceiling) +Basic 30/- (*Ad-hoc* incentive increment, if granted with effect from 1-1-70*).	Basic 665/- (ceiling) and Personal Pay Rs. 90/-. +Basic 30/- (*Ad-hoc* incentive increment, if granted with effect from 1-1-71*).

**Item 2(viii) of Appendix 'A' is reproduced below:—

"(viii) *Incentive Increment on reaching the ceiling of the grade*: The Management agree that employees who are of better than average ability in their grade, have a satisfactory record of service, and are recommended by their heads of Departments may, at the sole discretion of the Managing Director, be granted a further ad-hoc incremente every 2 years, upto a maximum of 3 such increments".

Illustrations under item 2(vi) :

(i) *Employee in 'B' Grade as per illustration under item No. 2(ii) above.*

SALARY

As on	Assumed old basic Rs.	Revised Basic (Rs.)
30-6-69	290	340 (1-7-69)
1-1-70	300	355
1-1-71	310	370
31-12-71	310	370

NOTE:—As on 31-12-1971, he is on efficiency bar at basic salary of Rs. 310 (old) in the grade of Rs. 170—8—210—10—310—EB—15—385—20—465—'B' Grade. He will be considered to be on efficiency bar in the grade at basic salary of Rs. 370 (Revised) as on 31-12-1971, under item 2(vi) of this Settlement. The question of granting him an increment in his basic salary for the year commencing 1st January 1972 will be considered by the Management under item No. 2 (vi) of this Settlement,

(ii) *Employee who is in 'B' Grade with 9 years service in 'B' Grade as on* 30-6-1969.

SALARY

As on	Assumed Old Basic (Rs.)	Revised Basic (Rs.)
30-6-69	280	310
1-1-70	290	325
1-1-71	300	340
1-1-72 ⎫	310	355
31-12-72 ⎭	310	355

NOTE:— As on 31-12-1972, he will be on efficiency bar at basic salary of Rs. 310 (old) in the grade of Rs. 170—8—210—10—310—EB—15—385—20—465—'B' Grade. He will be considered to be on efficiency bar in the grade at basic salary of Rs. 355 (Revised) as on 31-12-72, under item 2(vi) of this Settlement. The question of granting him an increment in his basic salary for the year commencing 1st January 1973 will be considered by the Management under item No. 2(vi) of this Settlement.

(iii) *Employee who is in 'B' Grade with 9 years service in 'B' Grade as on* 30-6-1969

SALARY

As on	Assumed Old Basic (Rs.)	Revised Basic (Rs.)
30-6-69	260	290
1-1-70	270	300
1-1-71	280	310
31-12-71	280	310

NOTE:— As on 31-12-1971, he will be on efficiency bar at basic salary of Rs. 310 (Revised in the grade of Rs. 170—8—210—10—310—EB—15—385—20—465—'B' Grade. The question of granting him an increment in his basic salary for the year commencing 1st January 1972 will be considered by the Management under item No. 2(vi) of this Settlement.

Illustration under Item No. 3:

	Mr. 'A'	Mr. 'B'
New recruits in regular service on the date of signing this Settlement	New Recuits	
Gtade	Sub-staff	'B'
Date of Joining	1-7-1969	2-8-1969
Date of Confirmation	1-1-1970	1-3-1970
Eligible to receive *Ad-hoc* Special Allowance under Item 3.	Rs. 20 p.m. w.e.f. 1-1-1970	Rs. 35 p.m. w.e.f. 1-3-1970

NOTE:— New Recruits (i.e. those who joined the Company's regular service on or after 1st July, 1969 and continue to be in the service of the Company on the date of signing this Settlement), are eligible to receive this *ad-hoc* Special Allowance only.

NOTE:— The principles underlying the illustrations given above under Item 4 of the Settlement are applicable to appropriate categories of staff, as per the provisions of the Settlement.

APPENDIX 'C'

Item 6(a) of the Settlement

(a) In Bombay City working hours for Assistants, (B, A, AS, S.A. and Assistant Inspectors), Record Clerks and Peons wherever increase in 1967 as per item 15 (a) of the 1966 Settlement (Appendix 'A') will be reduced by Fifteen Minutes Per Week. For others, their working hours will continue unaltered.

The Casual Leave for all categories of staff will be Ten Days per Calendar Year.

(b) In Tamil Nadu State, the present working hours will continue unaltered. The Casual Leave will also continue unaltered at 12 days per Calendar Year according to the provisions of the local Shops & Establishments Act.

(c) In Calcutta and Delhi Cities, the present working hours will continue unaltered. Casual Leave will also continue unaltered at Ten Days per Calendar Year. The 30th June and 31st December will continue to be holidays so long as they are declared as holidays in those cities under the Negotiable Instruments Act.

(d) At all other places in India, the working hours of different categories of employees will be same as in Bombay City as per para (a) above, and Casual Leave will be Ten Days per Calendar Year.

(e) The present Rules in regard to Casual Leave will continue, subject to the above.

20th January, 1972.

[No. 40/22/69-LR.I.]

B. K. SAKSENA, Under Secy.

(Department of Labour and Employment)

New Delhi, the 3rd March 1972

S.O. 888.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta, in the industrial dispute between the employers in relation to the management of Victoria West Colliery of Messrs New Birbhum Coal Company Limited, Post Office Dishergarh, District Burdwan and their workmen, which was received by the Central Government on the 22nd Ferbuary, 1972.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

REFERENCE No. 41 OF 1971

PARTIES:

Employers in relation to the management of Victoria West Colliery of Messrs New Birbhum Coal Company Limited,

AND

Their workmen.

PRESENT:

Shri S. N. Bagchi—*Presiding Officer.*

APPEARANCES:

On behalf of Employers—Shri U. R. Paul, Labour Relations Officer.

On behalf of Workmen—Sri C. N. Jha, Vice-President Colliery Mazdoor Congress.

STATE: West Bengal INDUSTRY: Coal Mines

AWARD

By Order No. 6/103/70-LR.II, dated 1st March, 1971, the Government of India, in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment), referred an industrial dispute existing between the Employers in relation to the management of Victoria West Colliery of Messrs New Birbhum Coal Company Limited, P.O. Dishergarh, District Burdwan and their workmen, to this Tribunal, for adjudication, namely:

"Whether the action of the management of Victoria West Colliery of Messrs New Birbhum Coal Company Limited, Post Office Dishergarh, District Burdwan in suspending, Sri A. P. Mukherjee, Clerk for 10 days with effect from 29th September, 1970, is justified? If not, to what relief is he entitled?"

2. In this reference the workman represented by the Colliery Mazdoor Congress and the management through their Labour Relations Officer, have come to a compromise relating to the dispute arising out of the suspension of the workman, A. P. Mukherjee. After the period of suspension was over, the workman was allowed to join his own post and has been continuing in the post as has been submitted by both the parties before me. The management upon withdrawal of the suspension order has agreed to pay to the workman wages for the period of suspension. The terms of compromise are fair, just and equitable and beneficial to the interest of the workman concerned. I, therefore, record the compromise and render this award in terms of the compromise which shall form part of my award.

Award be and is made accordingly.

(Sd.) S. N. BAGCHI,
Presiding Officer.

Dated, February 16, 1972.

BEFORE THE HON'BLE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, CALCULTTA

REFERENCE No. 41 OF 1971

PARTIES:

Employers in relation to Victoria West Colliery of Messrs New Beerbhoom Coal Company Limited, P.O. Barakar, Dist. Burdwan,

AND

Their workman represented by the Colliery Mazdoor Congress, Bengal Hotel, Md. Hussen Street, Asansol, Dist. Burdwan.

Joint Petition of Compromise:

The parties above named most respectfully beg to submit as under:

(1) That the above matter was referred for adjudication *vide* Ministry of Labour, Employment and Rehabilitation (Deptt. of Labour and Employment) Notification No. 6/103/70-LR.II dated 1st March, 1971.

(2) That the said matter is pending before the Hon'ble Tribunal for adjudication.

(3) That the parties in the meantime have mutually discussed the matter and have arrived at a settlement in terms stated hereunder:

Terms of Settlement:

(a) Without prejudice to the contention of the parties in the dispute the Employers shall on compassionate ground withdraw the order of suspension of the workman concerned for 10 days and shall pay the wages of the said period of suspension to the workman Shri A. P. Mukherjee.

(b) That the parties will bear the respective costs of this proceedings.

(c) That this compromise will be given effect to with immediate effect.

In the circumstances the parties herein concerned most respectfully beg to pray that this Hon'ble Tribunal may graciously be pleased to accept this compromise and pass an Award in terms thereof.

And for this the parties as in duty bound shall ever pray.

For Employers:

(Sd.) C. N. JHA,
Colliery Mazdoor Congress.
Representing the Workmen
Dated, 16-2-1972

(Sd.) U. PAUL,
Labour Relations Officer.
Dated, 16-2-1972.

[No. 6/103/70-LRII.]

New Delhi, the 7th March 1972

S.O. 889.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal (No. 1) Dhanbad, in the industrial dispute between the employers in relation to the management of Central Workshop, Jamadoba of Messrs Tata Iron and Steel Company Limited, Post Office Jamadoba, District Dhanbad, and their workmen, which was received by the Central Government on the 3rd March, 1972.

BEFORE THE CENTRAL GOERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD.

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947.

REFERENCE NO. 1 OF 1971

PARTIES:

Employers in relation to the management of Central Workshop, Jamadoba of Messrs Tata Iron and Steel Company Limited, Post Office Jamadoba, District Dhanbad.

AND

Their workmen.

PRESENT:

Shri A. C. Sen, Presiding Officer.

APPEARANCES:

For the Employers.—Shri S. S. Mukherjee, Advocate.
For the Workmen.— Shri S. Das Gupta, Advocate.

STATE: Bihar. INDUSTRY: Coal.

Dhanbad, dated the 19th February, 1972

AWARD

The present reference arises out of Order No. L/2012/5371-LRII, dated New Delhi, the 14th May, 1971 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute is specified in the schedule to the said order and the said schedule runs as follows:

"Whether the claim of Shri S. P. Singh, Rawat, Fitter Foreman, Central Workshop, Jamadoba of Messrs Tata Iron and Steel Company Limited, Post Office Jamadoba, District Dhanbad for Technical and Supervisory Grade-C in the scale of pay of Rs. 245--10—305--15—440 with effect from the 15th August, 1967, as per the Central Wage Board Recommendations is justified? If so, to what relief is the workman entitled?"

2. Written statement on behalf of the workmen was received in the office of the Tribunal on 14th June, 1971 and the written statement on behalf of the employers was received on 8th July, 1971. The case was heard on the following dates, namely, 30th November, 1971, 19th January, 1972, 9th February, 1972 and 16th February, 1972.

3. The workman concerned namely Shri S. P. Singh Rawat is working as fitter foreman in the Central Workshop, Jamadoba of M/s. Tata Iron and Steel Company Limited. It has been stated in para 2 of the written statement filed by the workmen that the Central Workshop has been set up by the Company at Jamadoba to meet the requirements of all the collieries, power house and Coal Washery owned by the company and that the Central Workshop is under the administrative control of the Chief Engineer.

4. From paragraph 4 of the said written statement it appears that the workman concerned, namely, Shri S. P. Singh Rawat was originally appointed in Tata Collieries with a pay scale of Rs. 46—3--64—4—80—EB—5—120 by letter No. JMP/473/05741 dated 20/21 April, 1961 and that he was subsequently confirmed with effect from 7th August, 1961 by the Chief Mining Engineer's letter No. C.E.-2374/61 dated 27/28th October, 1961.

5. It has been stated in paragraph 5 of the said written statement that Shri Rawat was sent for training as a Driller in the prospecting Department of the Company at Jamshedpur (*vide* Chief Engineer's letter No. C.E. 1532/62 dated 23rd/24th July, 1962) and that after completion of the training course, he was released by the Superintendent Geological Department with effect from 1st August, 1963.

6. In paragraph 6 of the said written statement it has been stated that in view of the high efficiency and good performance of Sri Rawat, the Chief Mining Engineer was pleased to promote him to the post of Fitter Foreman in the scale of Rs. 120—10—150 with effect from 1st December, 1964 and that after the completion of probationary period of three months he was confirmed in the post with effect from 1st March, 1965.

7. It has been pointed out in paragraph 7 of the said written statement that since the date of his promotion as Fitter Foreman, there has been no change of duties of Sri Rawat and that he has been performing the same duties and discharging the same responsibilities to the complete satisfaction of all his superiors.

8. It is common case of both the parties that the recommendations of the Central Wage Board for the coal mining industry as approved by the Government of India were implemented by the employers with effect from 15th August, 1967. It is also the common case of both the parties that in implementing the recommendations of the Coal Wage Board the management fitted all Fitter Foremen in grade 'C' for technical and supervisory staff which carries a pay scale of Rs. 245—10—305—15—440.

9. The complaint of the workmen is that despite the fact that Sri S. P. Singh Rawat has been designated as Fitter Foreman and the job performed by him is also that of a Fitter Foreman, the management has capriciously refused to place him in Grade-C in the scale of pay of Rs. 245—10—305—15—440 and that he was placed in grade-D in the pay scale of Rs. 205—7—247—10—337 inspite of the protest from the workman himself and his union, Colliery Mazdoor Sangh.

10. It has been stated in paragraph 11 of the said written statement that repeated representations from the workman and the union for the revision of rectification of the garde and pay scale of Sri S. P. Singh Rawat proved abortive and that consequently the dispute was taken up by the union also for negotiation at different levels of the management but all efforts of the union for arriving at a mutual settlement did not bear any fruit.

11. It is not disputed that the union ultimately referred the dispute for conciliation to the Assistant Labour Commissioner (C), Dhanbad *vide* its letter No. 1(9)/70/5776 dated 27th November, 1970 and that

the aforesaid conciliation proceedings ended in a failure.

12. The workmen have given in para 15 of their written statement the reasons in support of the demands made by them on behalf of Sri Rawat. The said paragraph runs as follows:

"That the claim of Shri S. P. Singh Rawat that he should be placed in Grade-C for the Supervisory and Technical Staff in terms of the recommendations of the Coal Wage Board is justified because—

(a) It is based on the actual job he has been performing since the date of his promotion;

(b) His very designation merits the same;

(c) In view of his pre-Wage Board scale, he is not entitled to anything less than Grade-C;

(d) The scale of Rs. 205—7—247—10—387 given to him in equivalent to pre-Wage Board scale of Fitters, namely Rs. 49—3—64—4—80—EB—5—120. It may be remembered that in 1964 he was promoted from this pay scale to the pay scale of Rs. 120—10—150;

(e) Fixing him in the Grade-D and pay scale of 205—337 amounts to nothing but demotion and alteration of service conditions to the prejudice of the workman concerned without any notice and without any plausible reason."

13. The case for the management as made out in their written statement may briefly be stated as follows.

Sri Rawat was appointed sometime in April 1961 in the grade of Rs. 46—3—64—4—80—EB—5—120. He was, however, given no designation at that time. He was thereafter on and from 1st December, 1964, designated as Fitter Foreman in the grade of Rs. 120—10—150. Although Sri Rawat was designated as fitter-foreman, he was not performing the duties nor discharging the responsibilities as are required of fitter-foreman. His normal work was that of a drill operator. He was operating a drill machine required for geological purposes. He is still continuing the same work. He is not performing the duties of a fitter-foreman as are required to be performed by a fitter-foreman working in the colliery.

14. In paragraph 5 of the written statement it has been stated that the duty of a fitter foreman posted in the colliery is to operate and maintain all the mechnical installations, both underground and surface, and to exercise supervision over a number of fitters working directly under him.

15. In paragraph 6 it has been stated that although Sri Rawat was designated as fitter foreman his jobs were only on drill machine and that he did not work on any other types of machines nor did he work for their maintenance. It has further been stated that as no fitters work under him he is not required to exercise supervision over their work.

16. The case of the management is that after assessing the responsibilities and jobs performed by Sri Rawat he was correctly placed in the grade of Rs. 205—7—247—10—337—EB—10—387.

17. As to why his designation was not changed the following explanation has been given in paragraph 9 of the written statement: "That it is submitted that although he had not been performing the duties nor discharging the responsibilities of a fitter foreman but since Sri Rawat designated as a fitter foreman, the management did not change the designation on the implementation of the Wage Board Recommendations but it was allowed to be continued as his personal designation."

18. The management has explained in paragraph 11 of the written statement why the claim of Sri Rawat has not been allowed. The said paragraph runs as follows: "That is submitted that although Sri Rawat, as all other workmen, is entitled to the wages only in relation to the works performed by him and not as per the designation, the matter was discussed in the Central Joint Implementation Committee consisting of the management and Union's representative in its third meeting held on 20th February, 1968 when the management explained the position and stated that the designation of the fitter-foreman will be his personal designation but he will remain in the grade, in which he has been placed."

19. The management submitted their rejoinder on 23rd July, 1971. Paragraphs 3 and 4 of the said rejoinder are very significant and they are quoted below:

"3. "That with reference to paragraph 6 it is submitted that no designation was given to Sri Rawat either at the time of appointment or during the period he was under training as a driller or when he was released after completion of the training. He was, however, given a higher scale namely Rs. 120—10—150, although his duties after completion of the training remained the same as driller and although he continued to perform the same duties as a driller even after fixing him in the higher grade".

4. That since the above scale of pay was that of a fitter-foreman Sri Rawat was designated as a fitter foreman, although he was not performing nor he was expected to perform the duties of a fitter foreman."

20. Let me discuss the evidence in order to ascertain whether the claim of the concerned workman Sri Rawat to be placed in grade 'C' is justified. From Ext. W3 it transpires that arrangement was made for his training as driller for one year in the Prospecting Department of Jamshedpur. He was requested to report to the Superintendent of the Prospecting Department as early as possible. Ext. W3 is dated 23/24th July, 1962. It was addressed to the concerned workman Sri Rawat. The letter was written by the Chief Engineer, Tata's Collieries. From Ext. W4 it transpires that he was promoted to the post of a Fitter Foreman on a basic salary of Rs. 120 (Rupees One hundred and twenty). The text of the letter is quoted below:

"We have the pleasure to inform you that you are hereby promoted to the post of a fitter-foreman on a basic salary of Rs. 120 (Rupees one hundred and twenty) only p.m. in the gade of Rs. 120—10—150.

You will be on probation for a period of three months in the first instance and confirmed thereafter if your service and conduct are found satisfactory during the probationary period.

Please take up your new assignment with effect from 1st December, 1964".

This letter too was addressed to Sri S. P. Singh Rawat and it was written by the Chief Mining Engineer, Tata Iron and Steel Co. Ltd., Jamadoba.

21. He received his letter of confirmation in the post of Fitter foreman on 30th March/1st April, 1965. The letter is to the following effect: "With reference to your application dated 27th March, 1965 requesting us to confirm you as you have completed probationary period, we are pleased to inform you that you have been confirmed in the Post on existing pay and scale with effect from 1st March, 1965".

22. Ext. W8 shows that he got his increment of Rs. 10 to his then salary of Rs. 130 with effect from 22nd December, 1966.

23. Sri Rawat appears to have acted as a driller and he applied for acting allowance. The following reply was given to his application for acting allowance: "With reference to your application dated 12th April, 1966, please note that you have already been given a

promotion recently and have been made a Fitter Foreman attached to the Driller. In your present post you are expected to operate the Drill and look after the Drilling Gear to the entire satisfaction of your Superiors. For this work no acting allowance is called for".

24. In his application for acting allowance dated 12th April, 1966 Sri Rawat stated as follows: "Most respectfully I beg to state that since Mr. Bagchi Ex. Driller has left this Concern I have been asked to look after the drilling job and as per your instructions I have managed the job from 5th March, 1964 to 25th April, 1965 with full satisfaction of the superiors.

Under the circumstances I most earnestly pray your goodself to be pleased to consider my case and grade me usual Acting allowance as per rules".

25. Ext. W9 shows that Sri Rawat is a fitter foreman attached to the Driller and that he is expected to operate the drill and look after the drilling gear. Hence it cannot be said that his function is merely to operate the drill. He is also to look after the drilling gear.

26. Ext. W4 shows that he was actually promoted to the post of a fitter foreman. Hence the contention of the management that the designation fitter foreman is merely his personal designation is not borne out by this Exhibit. He was in fact appointed to the post of a fitter foreman. I do not find any reason why he should not be placed in grade 'C' in which the other fitter foremen have been placed in accordance with the Recommendations of the Wage Board.

27. Ext. W10 shows that he was transferred to Sijua Colliery with effect from 17th June, 1968. He was asked to report for duty to the Dy. Chief Mining Engineer, Sijua Group. He was to remain under the administrative control of the Dy. Chief Mining Engineer, Sijua Group. That letter of transfer dated 15th June, 1968 described him as a fitter foreman, Boring Department, Jamadoba. There is an endorsement in the said letter in ink to the following effect: "Sri Rawat will be your foreman, so please engage him from today". This endorsement is addressed to the Chief Engineer, Bhelatand. This shows that he was to discharge the function of the foreman while in the colliery. The workman concerned as W.W.1 has stated in his examination-in-chief that he was transfered to Bhelatand as a fitter foreman sometime in June, 1968 and that as a fitter foreman of that colliery he had to do the same job as mechanical fitter foreman in other collieries. He has further stated that after 7 or 8 months he was transferred to the drilling machine again. So it transpires that he actually worked as a fitter foreman in the Bhelatand colliery for nearly 7 or 8 months.

28. He was transferred to the colliery from the Central Workshop. Unless his position in the colliery Central Workshop was equivalent to that of a fitter foreman in the colliery, he could not have been transferred to the colliery as fitter foreman. Ext. W11 dated 20th July, 1968 described him as a fitter foreman, Tata's Bhelatand Colliery. These two exhibits (Ext. W10 and W11) in my opinion support the claim of the workmen to be placed in grade 'C'.

29. It has been stated in paragraph 5 of the written statement submitted by the management that the fitter foreman posted in the colliery are to work and be responsible for all mechanical installations both underground and surface, their maintenance and exercise supervision over a number of fitters working directly under him. In other words their contention is that as the workman concerned is not required to operate a number of machines and is not required to supervise a number of fitters working directly under him, his job cannot be regarded to be equivalant to the job of a fitter foreman in the colliery. I am not prepared to accept this argument. The job in the workshop which is performed by the concerned workman may not be earlier than the job performed by the fitter foreman in the colliery. When the concerned workman was promoted to the post of fitter foreman in the workshop, the management must have thought that the work performed by him in the Workshop was in all respect equivalent to the work performed by a fitter foreman in the colliery. It is difficult to compare two jobs with reference to the number of operations to be performed in each. A particular workman may perform a good number of simple operations, whereas another may perform a single operation which is very complicated one. In such a case it is quite possible that the two workmen deserve equal emoluments.

30. It should be borne in mind that the concerned workman received training for one year from August, 1962 to 31st July, 1963 in the drilling section of the Prospecting Department at Jamshedpur. He went through the procedure for maintenance of drilling rigs, their operation and also maintenance of drilling Logs and preparation of requisitions of drilling stores. He evinced good interest in the work entrusted to him and he was reported well by the officers under whom he was placed. This shows that he acquired technical skill of a very high order as a result of his training at Jamshedpur in the Prospecting Department. Such a highly skilled workman, in my opinion, should not be placed in grade 'D' it is clear that on account of his greater skill he was promoted to the post of fitter foreman after his release from the Jamshedpur Prospecting Department.

31. From the evidence of M.W.1, Sri Ramchandran Chief Engineer of Tata Iron and Steel Company Ltd., we find that a driller is in the junior officer's cadre and that his salary is higher than that of a fitter foreman. It may be pointed out that when Mr. Bagchi, Ex-Driller left this concern the workman concerned. S. P. Singh Rawat, was asked to look after the drilling job and that he managed the job from 5th March, 1964 to 25th April, 1965 to the full satisfaction of his superiors (*vide* Ext. W12). He also applied for officiating allowance. His application was rejected on the ground that he was expected to operate the drill and look after the drilling gear to the entire satisfaction of his superiors. It was also pointed out to him that for this work he was not entitled to any acting allowance (*vide* Exts. W9). These two exhibits indicate that the workman concerned has got the necessary skill and training and for officiating as a driller, whose salary is higher than that of a fitter foreman. That being the position a great injustice in my opinion has been done to this workman concerned by placing him in grade 'C'

32. The evidence of M.W.1 further discloses that although fitters are not to work under the workman concerned, namely, Sri S. P. Singh Rawat, but in specific cases he may have fitters working under him. The witness has admitted that the fitters do not work independently. The fitters make specific parts for the machines and the assembly of these parts on the machine has to be done by the concerned workman, S. P. Singh Rawat. Sri Rawat also checks the specific parts supplied to him by the fitters. He gives the specification of the parts to be repaired by the fitters and that when the parts came back Sri Rawat check the correctness of the part. So it is not altogether correct to say that fitters are not required to work under the concerned workman. At least the fitters must have guidence from the concerned workman in preparing the parts according to the specifications given by the concerned workman.

33. We further get from this witness namely M.W.1 that when the drill machine goes wrong sometime in the colliery the concerned workman, S. P. Singh Rawat is required to repair the machine. He is also supposed to maintain the machine. If the workman concerned is required to repair the machine when it goes wrong in the colliery, he is expected to be assisted by the fitters while repairing the machine. So it cannot be said that he is not required to perform any supervisory function.

34. The workman concerned as W.W.1 has given an account of the operations to be performed by him. He

performs the job of a driller, job of a driller operator and the job of a fitter. He also send requisition for store materials and he places order for work in the workshop and see that the order is properly executed. He consults the officer about the new bore holes. As a driller he has first to ascertain the place where the bore-holes are to be made. Thereafter he is required to arrange for the construction of foundation and the laying out of the pipe line and to supervise the job of contractors. Thereafter he is required to requisition the main materials for transport. In the drilling machine that he operates five persons work including himself. Out of the four persons one is Coal Cutting Machine Driver, one is Tindal, one is helper and the remaining one is mazdoor. The concerned workman is required to supervise the work of these four persons. This part of his evidence was not seriously challenged in his cross-examination and the evidence given by the workman is that he performs the job of a supervisor.

35. In paragraph 15 of the written statement submitted by the workmen it has been stated that the scale of Rs. 205—7—247—10—387 given to the concerned workman is equivalent to pre-wage Board scale of fitters, namely Rs. 49—3—64—4—80—EB—5—120. It may be remembered that in 1964 the concerned workman was promoted from this pay scale to the pay scale of Rs. 120—10—150. It has not been denied that this pay scale which prevailed before the recomendations of the Wage Board is equivalent to the pay scale of Rs. 245—10—305—15—440 as per recomendations of the Wage Board. There is no reason why the concerned workman who was in the pay scale of Rs. 120—10—150 before the Recommendations of the Wage Board should not be fitted in the pay scale of Rs. 245—10—305—15—440 with effect from 15th August, 1967.

36. Even assuming that the workman concerned is not performing all the operations which a fitter foreman is required to perform, he cannot be for that reason deprived of the emoluments to which he is entitled by reason of the post to which he was promoted in 1964. In this connection reference may be made to the decision of the Supreme Court in the case of The State Bank of Bikaner and Jaipur and Shri Hari Har Nath Bhargava, reported in 1971 (II) L.L.J., p. 331. In that case the respondent was appointed clerk by the State Bank of Jaipur in 1949. He was entrusted with supervisory work from 6th April, 1954. The bank executed a power of attorney in his favour on May 31, 1954. On March 31, 1964 the respondent filed an application before the Central Government Labour Court, Rajasthan under section 33C(2) of the Industrial Disputes Act praying for computation of special allowance under what is known as the Sastry Award on the ground that he had been discharging supervisory duties from 6th April, 1954 to 1st January, 1956. The power of attorney provided *inter-alia* that the respondent might from time to time or at any time be appointed by the said bank as Branch Manager, Agent, Sub-Agent, Accountant, or in any capacity whatever for and in the name of and on behalf of the said back to do, transact jointly with Secretary, Manager, Sub-Manager etc. the matters and things mentioned thereafter. The matters mentioned thereafter included the endorsement of hundles, drafts, cheques, warrants, railway receipts pension bills and other responsibilities etc. After the execution of the power of attorney the respondent was empowered to discharge functions which could only be described as supervisory in nature. The claim of the respondent for special allowance was allowed by the Supreme Court. The following observations were made by the Supreme Court in support of its decision. In our view, the payment of a special allowance is called for when an employee discharges duties of a supervisory nature or is accorded the status of a person competent to discharge functions of a supervisory character.... .....If no power of attorney is executed as in this case but in fact the employee is asked to render services of a supervisory character and the employee does such work at the request of the bank, he becomes entitled to the allowance. Once however a power of attorney giving the wide powers of agency as was done in this case is executed, it should be held that the management had placed him in a category of persons with responsibility and the employee was to discharge the responsibility without any further request in that behalf..... .....If he discharged any of the duties mentioned in the power of attorney the same would be lawful and would be binding on the bank. The fact that he was not actually called upon to discharge such functions did not take away from him responsibility or status of a person competent to discharge functions of a supervisory character and we see no reason why he should be deprived of supervisory allowance unless the bank gave him notice, that he was not to act on the power of attorney....."

37. On the principles laid down in that case it may be pointed out that Sri Rawat by being promoted to the post of fitter foreman was required to discharge the functions of fitter foreman if and when required. In fact he was once transferred to the colliery for the purpose of discharging the functions of fitter foreman in the colliery. Even if it be assumed that he is not required to do the supervisory functions of a fitter foreman while working in the Central Workshop, that fact alone cannot take away from him the responsibility or status of a fitter foreman. He therefore cannot be denied the grade of a fitter foreman as recommended by the Coal Wage Board on the plea that in fact he is not discharging the various responsibilities of a fitter foreman.

38. The above discussions make it clear that the award must be given in favour of the workman concerned. I therefore award that the claim of Shri S. P. Singh Rawat, fitter foreman, Central Workshop, Jamadoba of M/s. Tata Iron & Steel Co. Ltd., P.O. Jamadoba for technical and supervisory grade-C in the scale of pay of Rs. 245—10—305—15—440 with effect from 15th August, 1967 is justified and that he should be placed in that grade with effect from 15th August, 1967, and I further award that he is entitled to claim all past arrears that would have been payable to him had he been placed in grade C with effect from 15th August, 1967.

39. The award may be forwarded to the Central Government as required under section 15 of the Industrial Disputes Act, 1947.

(Sd.) A. C. SEN,
Presiding Officer.

[No. L/2012/53/71-LRII.]

S.O. 890.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award Part VI of the Central Government Industrial Tribunal (No. 2), Bombay in the industrial dispute between the employers in relation to the Shri Manohar Hiru Naik Parulekar, Owner, Pissurulem Mines and Messrs Janardhan Zarapcar, Raising Contractors, Pissurulem Mines, Mapucca, Goa, and their workmen, which was received by the Central Government on the 28th February, 1972.

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, BOMBAY

REFERENCE No. CGIT-2/6 OF 1969

Employers in Relation to Shri Manohar Hiru Naik Parulekar, Mine Owner, Pissurulem Mines, Mapuca, Goa and Messrs Janardhan Zarapcar, Raising Contractors, Pissurulem Mines, Mapuca, Goa and their workmen.

PRESENT:

Shri N. K. Vani, Presiding Officer.

APPEARANCES:

For the Employers.—1. Shri G. U. Bhobe, Advocate, 2. Shri Ramesh Desai, Labour Adviser.

For the Workmen.—Shri George Vaz, General Secretary, Goa Mining Labour Welfare Union, Goa.

INDUSTRY: Iron Ore Mines.

STATE: Goa, Daman and Diu.

Bombay, dated the 10th February, 1972

AWARD PART—VI

By order No. 24/9/68-LRI dated 1-5-1969 the Central Government in the Ministry of Labour, Employment and Rehabilitation (Department of Labour and Employment) in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred to this Tribunal for adjudication an industrial dispute existing between the employers specified in Schedule I, in relation to Pissurulem Mine of Shri Manohar Hiru Naik Parulekar and their workmen in respect of the matters specified in the Schedule II as mentioned below:—

SCHEDULE I

"(1) Sri Manohar Hiru Naik, Parulekar, Owner Pissurulem Mines, Mapuca, Goa.

(2) Messrs Janardhan Zarapcar, Raising Contractors, Pissurulem Mines, Mapuca, Goa."

SCHEDULE II

"1. Whether the action of the management of Shri Manohar Hiru Naik Parulekar, Owner Pissurulem Mine and Messrs Janardhan Zarapkar, Raising contractors of Pissurulem Mines in not implementing the final recommendations of the Central Wage Board for Iron Ore Mining Industry as accepted by the Government of India in respect of the workmen employed in their Iron Ore Mines with effect from the 1st January, 1967, is justified? If not, to what relief are the workmen entitled?

2. Whether the action of the management of Shri Manohar Hiru Naik Parulekar, Owner of Pissurulem Mine in retrenching the following workmen *vide* notice dated the 1st December, 1968 is justified?

1. Shri Chandra Gaunco.
2. Shrikrishna Morajkar.
3. Appana Karne.
4. Nanashib Dodmani
5. Michael D,Souza.

If not to what relief are the workmen entitled?

3. Whether the action of the management of Messrs. Janardhan Zarapkar raising contractor of Pissurulem Mine in terminating the services of the following workmen *vide* notice dated the 1st December, 1968 is justified?

1. Harishchandra Mayekar
2. Dinu Marathi Jadhav
3. Hussen M. Mulla
4. Mutta Swami
5. Prabhakar Bhagat
6. Shanu Amonkar
7. Vinick Bhagat
8. Kalappa Marathe.

If not, to what relief are the workmen entitled?

4. Whether the action of Messrs. Janardhan Zarapkar raising Contractor of Pissurulem Mine in terminating the services of the following workmen in their notice dated 2nd January 1969 is justified?

1. Uttam Narayan Kamath
2. Jayaram R. Shirodkar
3. Dhalo Kamath
4. Yeshwant Herjan
5. Narayan Shetkher
6. Anant Nirankal
7. Anant Goakar
8. Ramesh Viagonkar
9. Prakash V. Naik
10. Prabhakar Virdikar
11. Laxman Pissurlekar
12. Sitaram Powar
13. Babli B. Naik
14. Antu Powar.

If not, to what relief are the workmen entitled?

5. Whether the action of Messrs Janardhan Zarapcar raising Contractor Pissurulem Mine in terminating the services of Shri Manohar Tukaram Tari with effect from the 20th December, 1968 is justified? If not to what relief is the workmen entitled?"

2. Out of 5 issues referred to this Tribunal as mentioned in Schedule II above, issue No. I in respect of action of the management of Shri Manohar Hiru Naik Praulekar, Owner Pissurulem Mine and Messrs Janardhan Zarapcar, raising Contractors of Pissurulem Mine in not implementing the final recommendations of the Central Wage Board for Iron Ore Mining Industry as accepted by the Government of India in respect of the workmen employed by the raising Contractor Messrs Janardhan Zarapcar is heard and disposed of by Award Part VI.

3. As regards issue No. I to this extent, referred to above, the dispute is between the management of Shri Manohar Hiru Naik, Parulekar, Owner Pissurulem Mines, and Messrs Janardhan Zarapcar, raising Contractor, Pissurulem Mines, Mapuca, Goa and the employees of Messrs Janardhan Zarapcar raising contractor, Pissurulem Mines.

4. Messrs Janardhan Zarapcar, raising contractor pissurulem Mines (hereinafter referred to as Shri Zarapcar) have filed written statement at Ex. 1/E. His contentions in respect of issue No. I are given in paras. 2 to 6 of the Ex. 1/E.

5. According to Shri Zarapcar;

(i) The raising contract in respect of part of the Pissurulem Mines was taken in July, 1966. At the time of taking over the contract he had no knowledge regarding the Wage Board recommendations. There are number of contractors in Goa who are undertaking the extraction work for the mine owners and to the best of his knowledge hardly any contractor has implemented these recommendations.

(ii) The extraction rate was fixed at Rs. 14 per ton, delivery at loading points with 7 per cent deduction for moisture and ground shortage.

(iii) Extraction work was going on smoothly for sometime, but in the first quarter of 1968 few mine owners in Goa implemented the recommendations of the Wage Board in part. Naturally the workmen employed by him approached for extending these benefits to them. The extra financial burden was beyond his capacity. Even then purely with a view to maintain good relations of his own accord started paying Rs. 13 to Rs. 20 more per workmen per month. Even this small increase added an amount of Rs. 8000 to Rs. 10,000 in the annual wage Bill. On the other hand production, was going down.

(iv) Looking to the amount of business and expenditure incurred on the machinery, labour cost, wage bill etc. it will be evident that it was beyond his capacity to bear any additional burden, so as to keep the business in proper order. In spite of this he extended the full benefits of variable Dearness Allowance to his employees with effect from September, 1968. It is requested that this Tribunal be pleased to varify these facts and on the basis of these facts reject the claim of the workmen for full implementation of the recommendations of the Wage Board. The representative of the workmen had mutually agreed to be content with his performance as he was only a contractor and not the mine owner of the mine. This understanding was

reduced in writing by way of a settlement signed on 16th December, 1968, *vide* copy annexure'C' attached to the written statement.

6. Shri George Vaz., General Secretary, Goa Mining Labour Welfare Union has filed written statement on behalf of the employees at Ex.3/W. Paras. 2 to 26 relate to issue in question.

7. According to Shri Vaz;

(i) Messrs Manohar Hiru Naik Parulekar, ownes the Iron Ore, Mine at Pissurulem, Satari Taluka, known as 'Guellem E Gaval' and has his Head office at Mapuca, Goa. The Iron Ore industry of the said Manohar Hiru Naik Parulekar is almost 10 years old. There are about 10 workmen directly working under the said Manohar Hiru Naik Parulekar. He reduced his staff after he had leased out a part of his mine to the Iron Ore raising Contractor Messrs Janardhan Zarapcar. The said raising contractor has been doing the work of raising Iron Ore from the year 1966. The said Shri Zarapcar had in his employment as department and technical staff about 50 workmen. Messrs Janardhan Zarapcar also gave sub-contracts to other contractors. Thus on the whole working of the mine employed about 200 workmen as unskilled workers. As a result of this contract with Shri Manohar Hiru Naik Parulekar, Messrs Janardhan Zarapcar became one of the richest man in the territory. To begin with he had no proper mining machinery, transport facilities and Earth moving machinery. Within a period of two years of his working, Messrs Janardhan Zarapcar purchased the following machinery.

(1) Trucks: 9 Heavy Dumper Trucks and 16 other Trucks (Makes of Trucks—7 Thorrycraft, 12 International truck, 4 DAF, 1 Chevrolet, 1 Dodge).

(2) Shovels: 1 Caterpiller Excavator 977 on chains (Traxcavator)

(3) Shovel: Michigan Big Size Excavator on tyres

(4) Air Compressors: 3—Big Size—Holman Climax, 2 Small Size

(5) Wagon Drills: 3 Helman Drill—Wagons

(6) Jeeps.

(ii) Messrs Janardhan Zarapcar and Parulekar were paying to their staff very meagre remunerations and initially refused to move with the tune of the time.

(iii) The Government of India in pursuance of its policy under the Second and Third Five Year Plan by the Resolution of the Ministry of Labour, Employment and Rehabilitation No. WB(21)/1/1962 dated 3rd May, 1963, constituted a Wage Board for the Iron Ore Mining Industry. The terms of Reference to the said Wage Board were as under:-

"(a) To determine the categories of employees manual, clerical, supervisory etc.) who should be brought within the scope of the proposed wage fixation.

(b) To work out a wage structure based on the principles of fair wages as set forth in the Report of the Committee on Fair Wages.

(c) To consider the demand for the introduction of a gratuity scheme on an industry-wise basis."

(iv) The Wage Board was constituted with Shri L. P. Dave as its Chairman. The Wage Board issued the questionaire to be replied to by all the parties and by individual mine owners. The Goa Mineral Ore Exporters Association and the Goa Mining Association of which Messrs Manohar Hiru Naik Parulekar and Messrs Janardhan Zarapcar are members and important mine owners in Goa like M/s Sessa Goa Pvt. Ltd., M/s Chowgule & Co. Pvt. Ltd., M/s V. M. Salgaocar & Bros., Pvt. Ltd., M/s Shantilal Khushaldas & Co. Pvt. Ltd., M/s V. S. Dempo & Co. Pvt. Ltd., replied to the Wage Board questionaire in respect of conditions are prevalent in the Iron Ore Industry in Goa.

(v) The Wage Board after recording, examining and considering the financial possibilities of the Iron Ore Mining Industry in the country made its recommendations unanimously and submitted its report to the Government of India. The Government of India in the Ministry of Labour, Employment and Rehabilitation by its Resolution No. WB-2(3)/67 dated 3rd June, 1967 accepted the said recommendations.

(vi) The Wage Board created 12 wage scales both for daily rated and monthly rated workmen and suitable scales for the Clerical staff. It recommended a scheme of dearness allowance and also recommended a minimum wage and new rates of payment for the price rated workers working through contractors. It recommended a fitment formula besides a gratuity scheme. It also recommended that its recommendations would come into effect as from 1st January, 1967 and would remain in force for five years i.e. till 31st December, 1971.

(vii) As the recommendations of the Wage Board were unanimous it had the effect of an agreement between the employers and the workmen through their representatives on the Wage Board. Hence it is not open to the employer to deny the benefits under the said recommendations.

(viii) The defence of Mine owner and his Raising Contractor recording incapacity to pay higher wages as recommended by the Wage Board is not based on facts. It is exaggarated and baseless. The Wage Board itself considered the question of groups of mines for wage fixation. In para, 6. 22 of the Wage Board recommendations, it considered the question of groups of mines and observed as follows:—

"Groups Of Mines For Fixation

6.22 Whether the same wage should be fixed for the entire industry or different wages should be prescribed for different regions was a matter of great significance and the Board gave its very serious and anxious consideration. If this matter is examined from the point of view of cost of living, it appears that regional differences are not very justifiable. As early as 1948, the wage fixation authorised has begin to feel that the trends were towards levelling of industrial wages-different industrial wages in different industrial centres. Recent improvements in communications have tended to further reduce these differences. At present the cost of living is almost the same, though the standard of living may be slightly different from one place to another. Regional distrubutions of mining area on the basis of cost of living did not, therefore, appear to be desirable. On the basis of paying capacity too, a clear and distinct regional distribution of mines was not possible. In the same region there were all types of mines. The Board was however, anxious to avoid a sudden increase in the case of mines wherein wages, for whatever reason it may be, were low. After a good deal of discussions in its several meetings and considering the pros and cons of various ways of giving concessions to certain units of the industry wherein wages are low so that they may get sufficient time to come up to the leval of better paying units, it was decided that while the same wage

should be prescribed for the entire industry the needs of units which require relief would be fairly met if they were given the facility of increasing wages, in a phased manner. For this purpose the Board classified the Iron Ore Mines in the country into the undermentioned three groups or categories on the basis of the minimum level of wages (total emoluments) existing on 1st April, 1966.

Groupe of Mines	Mines where the total minimum where :	emoluments on 1-4-1966
	Per month	Per day
I	Below Rs. 91/-	Below Rs. 3.50
II	Rs. 91/- to Rs. 104/-	Rs. 3.50 to Rs.4.00
III	Above Rs. 104/-	Above Rs. 4/-

MINIMUM TOTAL EMOLUMENTS IN VARIOUS GROUPS OF MINES

6.23. The Board carefully considered the needs of workers in the background of the needs of the industry and country's interests. Being fully conscious of the economic difficulties with which the country was faced at present, the Board felt that even though there was a clear case for a substantial wage rise, a contious approach should be made to the problem of wage fixation in the industry. In consquence thereof the Board recommends that the total minimum emoluments of the lowest paid unskilled worker, with effect from 1st January, 1967, in the various groups of mines should be as follows:—

(a) Rs. 104 per month or Rs. 4.00 per day in group I mines;

(b) Rs. 117 per month or Rs. 4.50 per day in group II mines;

(c) Rs. 130 per month or Rs. 5.00 per day in group III mines.

All these minimum emoluments are corresponding to the All India average consumer price index number 166 (1949=100) and they include basic wages, dearness allowance, cash value of food grain concession if any, interim wage increase recommended by the Board, Mining allowance, house rent allowance, if any etc. etc.

Manner of Phasing Wages

6.24. The manner in which the wages are being phased to bring them up to the level of the wages in group III mines is being explained in subsequent paragraphs but it may be pointed out here that it is proposed to raise each year wages of the monthly rated workers by Rs. 6.50 and of the daily-rated workers by Rs. 0.25 till they reach the minimum total emoluments fixed for the group III mines i.e. Rs. 130 per month of Rs. 5 per day. Moreover, the method of phasing wages is being resorted to not only in respect of the lowest paid workers but in respect of a few other categories of workers as well.

(ix) The Wage Board gave serious consideration in its report to various problems of export of Iron Ore, Port facilities, possibilities for development of Ports, Ore handling facilities at Ports, better transport facilities, possibilities of reduction of transport loading etc. It considered the effect of devaluation of the Indian Rupee by 57 per cent. After careful consideration of the problems the Wage Board fixed unanimously wage scales, dearness allowance and gratuity scheme together with a date for the implementation of the award. Observations of the Wage Board clearly show that the Mine Owner and his Raising Contractor's allegations regarding incapacity to pay these scales are imaginery. Important mine Owner in Goa have already implemented the recommendations as from 1st July, 1967 and some from 1st January, 1967. Most of the mine owners have signed agreements with the Union agreeing to implement the recommendations in toto.

(x) As a matter of fact the financial position of the company has no relevance for determining this reference. All the recommendations of the Wage Board including the date of effect are based on the financial position of the industry as a whole. From the entire report of the Wage Board it will be seen that the Board considered the financial position of the Industry to bear the burden of the recommendations. The Board with regard to the financial position and the paying capacity of the industry has observed as follows:—

"Conclusion About Paying Capacity

5.92 Taking an overall view of the present economic position of the industry and the future possibilities both in regard to the internal consumption of iron ore and its export, the Board is satisfied that the position of the industry is good and likely to be better. The Board realises that cost of all items of expenditure, particularly of stores, spare parts etc. is increasing and due to devaluation the imported material are costing more. But the industry has been able to bear all these increases and it should not be difficult for the Industry to absorb the wage increases which are of an unavoidable nature. It is difficult to ignore Labour's arguments that why their wages should not rise when their cost of living has increased enormously and when the industry is paying more for every other item of cost, why not Labour? In the Board's view the industry is in a position to bear the burden of wages that are being proposed by the Board."

(xi) The workers of the Mine Owner and his Raising Contractors are entitled to the recommendations of the Wage Board from the date on which it has become enforceable and this Tribunal should make an award in terms of the demand as mentioned in Schedule II (I) above and direct the company to pay wages to the workmen with effect from 1st January, 1967 as per the recommendations of the Wage Board.

(xii) On or about the 14th November, 1968 the Union gave a strike notice to messrs Manohar Hiru Naik Parulekar and Messrs Janardhan Zarapcar demanding the immediate implementation of the recommendations of the Central Wage Board for Iron Ore Industry as acecepted by the Government of India. Before the strike could commence the Asstt. Labour Commissioner (Central) Vasco-da-Gama intervened in the dispute and brought about a working settlement on 16-12-68 wherein it was agreed by the said two employers that they would start paying to their employees with effect from 1-9-1968. Variable Dearness Allowance as per recommenadtions of the Wage Board as accepted by the Government of India, that they would discuss with the Union on or before 15-1-1969 regarding implementation of the other recommendations of the Wage Boards. As a matter of fact both employers initially had agreed to implement all the recommendations of the Union. It was their contention that they would do so if it was done by other mine owner in this region. However, subsequently on the ill-advice given to them both the employers changed their tone and tried to evade the implementation of the recommendations.

(xiii) The recommendations of the Wage Board have been implemented in Goa territory by a large number of Mine Owners and Raising Contractors, as mentioned below:—

(1) Messrs V. M. Salgaocar and Brother Pvt. Ltd. Mine Owner.

(2) Messrs Anil V. Salgaocar—Raising Contractor.

(3) Messrs Companhia Mineira Dempo and Souza Pvt. Ltd.—Mine Owners.

(4) Messrs V. S. Dempo and Co. Pvt. Ltd.—Mine Owners.

(5) Messrs Salitto Ore Pvt. Ltd.—Mine Owners.

(6) Messrs R. N. S. Bandecar—Mine Owners.

(7) Messrs V. N. Bandecar—Mine Owners.

(8) Messrs V. N. Bandecar—Mine Owners. tors.

(9) Messrs Min Goa Pvt. Ltd.—Raising Contractors.

(10) Messrs Damodar Mangalji and Co., Mine Owners.

(11) Messrs Chowgule and Co. Pvt. Ltd.—Mine Owners.

(12) Messrs Shantilal Khusaldas Brothers Pvt. Ltd.—Mine Owners.

(13) Messrs S. Kantilal and Company—Mine Owners.

(14) Messrs M. S. Talulikar—Mine Owners.

(15) Messrs N. S. Narvenkar—Raising Contractors.

(16) Messrs Timblo Pvt. Ltd.—Mine Owner.

(17) Messrs Pandurang Timbo Industries—Mine Owners.

(18) Messrs Sociedade de Formento Industrial Pvt. Ltd.—Mine Owners.

(xiv) The wages have been fixed on the basis of inttially introduced by the Fair Wage Com- a major portion of the industry is paying wages to its workmen in the industry as per the recommendations of the Central Wage Board These recommendations have granted minimum wages. The present employers cannot be therefore made exception and cannot claim any right for any reason to pay lesser wages than paid by other concerns in the industry in this region.

(xv) The principle of Industry-*cum*-Region was initially introduced by the Fair Wage Committee and subsequently endorsed and confirmed by the Supreme Court on the ground that equal wages for equal work will bring healthy competition between different traders in one industry in the region. Any variation from this principle would ultimately lead to discrimination and application of double standards. In the case of Liptons Company—1959 Vol. I, LLJ, Page 431 and the case of Crown Alluminium—1958 Vol. I, LLJ. Page 1 the Supreme Court held that if an employer is not able to pay minimum wages fixed for the industry he has no right to exist.

(xvi) The Wage Board recommendations have taken into the consideration the capacity of the Industry as a whole and the capacity of the Iron Ore Industry in Goa region as a whole, while making recommendations. As these recommendations are unanious they should not be allowed to be flouted either by one or the other parties.

(xvii) The action of Messrs Manohar Hiru Naik Parulekar and Messrs Janardhan Zarapcar his Raising Contractor in not implementing the final recommendations of the Central Wage Board for Iron Ore Industry as accepted by the Government of India is therefore not justified, and these employers be directed to implement these recommendations with effect from 1-1-1967.

8. Shri Zarapcar on behalf of the firm has filed rejoinder at Ex. 7/E.

9. According to Shri Zarapcar.

(i) He was working only as a Raising Contractor. The responsibility for implementing the Wage Board recommendations has been thrown upon the principal employer by the recommendations of the Wage Board para. 28 as accepted by Government. As per this paragraph 28 of the Wage Board recommendations the principal employer would be liable for implementing the recommendations in respect of contract labour. It was also suggested by the Wage Board that the system of contract work should be slowly abolished. This was accepted by the Government.

(ii) The Central Wage Board's recommendations for Iron Ore Industry were implemented some of the Mine Owners in Goa some time after January, 1968. The workmen employed by the Raising Contractor started agitating over this issue. As this rates for Raising the Ore were fixed it was not possible for him to bear any additional burden. He made this fact clearly to the workmen. With a view to maintain better relations he started paying *Ad-hoc* increase of Rs. 20 to his employees with effect from February, 1968 though financially it was beyond his capacity and though morally the principal employer was responsible for this.

(iii) Originally the Raising Contract was taken for a period of 2 years in October, 1966 when he had absolutely no knowledge about the impact of the recommendations of the Wage Board. The rates fixed do not permit any additional financial burden beyond what was paid to the workmen. Wages given to his employees includes *ad hoc* allowance paid from February, 1968 and the variable Dearness Allowance paid from September, 1968. These wages can be compared with any other set of workmen employed by Raising Contractors. As he is not a mine owner the wages paid by him cannot be compared with the wages of workmen employed by the Mine Owners or the ore exporting firms. The Mine Exporters as well as the mine owners get much higher rate per tone of ore as compared to the raising contractor. He was getting Rs. 14 per tonne of ore delivered at the river loading points.

(iv) It is not true that he became one of the rich persons in Goa on account of contract. It is also not true that his financial Position has been improved.

(v) It is not true that on account of his contract there was reduction in the staff employed by Shri Manohar Hiru Naik Parulekar. He took the contract in October, 1966. He is not aware as to whether the owner was running the industry for more than 10 years.

(vi) While fixing the wage policy, the wage board had in mind the mine owners and not the Raising Contractors who raise the ore for the owners at a fixed rate mostly to their disadvantage. On the basis of the financial position and on the basis of the nature of the recommendations fixing the responsibility on the owner, the Tribunal be pleased to come to the conclusion that the being Contractor is not legally and morally bound to implement recommendations.

(vii) His financial position is not sound. He is not in a position to bear the burden. In view of the conciliation and settlement arrived at on 16-12-1968, the Union cannot raise any issue settled by the settlement, and cannot

claim benefits prior to the date agreed in the settlement. As the Union requested to implement the recommendations from 1-1-1969, it cannot now claim that it should be implemented from prior date.

(viii) The management has shown his willingness for settling the dispute by direct negotiations. As a result of these negotiations the management started paying Variable Dearness Allowance from September, 1968 though the settlement was signed on 16-12-1968. It was assured that if the firm would got more production it would try its level best to see that the workmen get further benefits. Due to the causes beyond the management's control and and expectations he could not get any ore and had to discontinue the raising work from January 1969. Since January 1969 he has only removed the ore already stacked and the production has ceased. As the raising work has been discontinued this Tribunal should not entertain the dispute pertaining to implementation of the Wage Board recommendations.

(ix) It is not true that he had agreed to implement all the recommendations of the Wage Board as alleged by the Union.

(x) It was never admitted that the firm could be compared with the other mines in the region because this mine has always turned to be a very poor mine for the ore. It cannot be compared with any other mine in Goa. In view of this the contention of the Union that his firm should implemented the recommendations if others do it is not tenable.

(xi) His firm cannot be compared with other companies referred by the Union in its written statement. The employees have not given the details regarding service conditions of the employees in respect of other companies. It is not therefore possible to compare the conditions of the employees in his firm with those in other companies.

(xii) The Union is trying to compare the Raising Contractors with the mine owners. This comparison cannot be made as the margin of profit varies with every types of the firm. In any case these principles cannot be made applicable in a unit which has no paying capacity and which has closed down its work of raising the ore even prior to the date of reference.

(xiii) It is not true that the firm was paying less wages than the other comparative units from the said region.

(xiv) His firm is in no way a party to any of the recommendations made by the Wage Board as his firm was not a member of any association which represented the other mine owners or raising contractors at the time of hearing of the case before the Wage Board.

(xv) Recommendations of the Wage Board are not binding type.

(xvi) The Union has bound itself by signing agreement in conciliation which still subsists and as such no directions be made in this respect. In any case the Union's demand regarding implementation, of the recommendations of the Wage Board with effect from 1-1-1967 be not entertained, inasmuch as such demand was made by the Union for the first time in the month of June, 1968.

10. The Union has examined Shri Manohar Tukaram Tari at Ex. 85/W support of its case in this respect. It has produced documents at Ex. 86/W, 87/W, 88/W, 23/W, 115/W to 119/W.

11. The Mine Owner Shri Manohar Hiru Naik Parulekar has examined the Manager, Shri Dattaram Sakaram Kashalkar, at Ex. 89/E and the Accountant Shri Peter Antony Luis, at Ex. 91/E in support of his case. He has produced documents at Ex. 92/E.

12. Shri Zarapcar has examined one of his partners Shri Sarad Chandra Janardhan Zarapcar at Ex.97/E and the Income Tax consultant Shri Vithal Yallojirao Pawar at Ex. 98/E in support of his contention. He has produced documents at Ex. 93/E to 96/E, and 99/E to 114/E.

13. From the pleadings and arguments advanced before me, the following points arise for decision in this reference.

(i) Whether the action of the management of Shri Manohar Hiru Naik Parulekar, Owner Pissurulem Mine and Messrs Janardhan Zarapcar, Raising Contractors of Pissurulem Mine in not implementing the final recommendations of the Central Wage Board for Iron Ore Mining Industry as accepted by the Government of India in respect of the workmen employed by the raising contractor Messrs Janardhan Zarapcar with effect from 1-1-1967 is justified?

(ii) To what relief are the workmen entitled?

(iii) What order?

14. My findings are as follows:—

(i) Yes.

(ii) Workmen are not entitled to any relief.

(iii) As per order.

Reasons

Point No. i, ii and iii.

15. At the outset it may be noted that the dispute between Shri Manohar Hiru Naik Parulekar, Owner, Pissurulem Mine, Goa and his employees in respect of action in not implementing the final recommendations of the Central Wage Board for Iron Ore Mining Industry as accepted by the Government of India with effect from 1-1-1967, is already settled by agreement between the parties. I have given Part V Award in this respect on 9-12-1971.

16. The dispute regarding not implementing the final recommendations of the Wage Board for Iron Ore Mining Industry as accepted by the Govt. of India with effect from 1-1-1967 between Messrs Janardhan Zarapcar, Raising Contractors of Pissurulem Mines and their employees however remains to be considered. I am therefore considering this dispute now.

17. Shri George Vaz, General Secretary, Goa Mining Labour Welfare Union, appearing on behalf of the employees contends that both the employers had initially agreed with the Union to implement all the recommendations, if this was done by other mine owners in this region and that inasmuch as other mine owners in Goa region have implemented these recommendations, Shri Zarapcar cannot now refuse to implement those recommendations.

18. There is no material on record before me to hold the agreement referred to above between the Union and Shri Zarapcar proved, Shri Vaz has not examined any officer of the Union to prove this agreement. He has not produced any documentary evidence to prove this agreement. The burden to prove this agreement is not on the employer. As the employees have failed to discharge this burden, there is no other alternative but to conclude that the alleged initial agreement between the Union and Shri Zarapcar in this respect is not proved.

19. Shri Vaz contends that the employees were to go on strike for one day as Shri Zarapcar had not implemented the Wage Board recommendations, but

the employees withdraw the strike and resumed their duties after half day's strike as Shri Zarapcar had given assurance that he would give Wage Board benefits to the employees. In support of this contention reliance is placed on the evidence of Shri Manohar Tukaram Tari, Ex. 85/W.

20. Shri Manohar Tukaram Tari's evidence Ex. 85/W in this respect is as follows:—

"There was strike in all mines on 3rd November, 1967. Employees of Janardhan Zarapcar also took part in the strike. Employees of Parulekar also took part in the strike. On the date of strike Zarapcar and his son met us and asked us as to why we have proceeded on strike. We told them that other mine employees were demanding Wage Board benefits. They told the employees that they would give Wage Board benefits and that they would not go on strike. The employees, therefore, called off the strike on 3rd November, 1967, after remaining on strike for half day.

There was agreement between the Union and various companies for extending Wage Board benefits to the employees. Shri Zarapcar however did not extend the Wage Board benefits to the employees."

21. Shri Ramesh Desai appearing on behalf of Shri Zarapcar contends that there was no agreement between the Union and Shri Zarapcar that he would implement the Wage Board recommendations, nor was there any assurance in this respect given to the employees in pursuance of which the workers had called off the strike. In support of this contention, he relies on the evidence of Shri Sharad Chandra Janardhan Zarapcar, Ex. 97/E, strike Notice dated 3rd June, 1968, Ex. 86/W, Settlement dated 1st July, 1968, Ex. 87/W Strike Notice dated 14th November, 1968, Ex. 23/W and settlement dated 16th December, 1968, Ex. 88/W. In the strike notice dated 3rd June, 1968, Ex. 86/W given by the Union to Messrs Janardhan Zarapcar, Mining Contractor, there is no reference about the alleged agreement or assurance referred to above. One of the demands made in this strike notice is as follows:—

"(b) Full implementation of the Central Wage Board for Iron Ore Mining Industry to all the mine workers employed through mining contractor M/s. Janardhan Zarapcar, Mapuca, Goa."

22. If there would have been any agreement or assurance as contented by the employees, the General Secretary of the Union would have certainly made reference about this in the strike Notice.

23. It appears that after the strike notice Ex. 86/W dated 2nd June, 1968, there was settlement between the parties before the Assistant Labour Commissioner (C), Vasco-de-Gama. Copy of that settlement is produced at Ex. 87/W dated 1st July, 1968. Paragraphs 3 and 4 of that settlement are as follows:—

"3. It is further agreed that the question of implementation of the recommedations of the Central Wage Board for Iron Ore Mining Industry as accepted by the Government of India in their Resolution No. WB-2(3)/67 dated 3rd June, 1967 will be negotiated between the parties for settlement within one month from the date of this settlement. In the event of the parties falling to arrive at a mutual settlement, either parties would approach the Asstt. Labour Commissioner (C) Vasco-de Gama thereafter.

4. The Union hereby withdraws its strike Notice No. KAR/WB/23/1968 dated 3rd June, 1968."

24. By the above mentioned settlement the strike notice Ex. 86/W was withdrawn. It was agreed that the question of implementation of the recommendations of the Central Wage Board for Iron Ore Mining Industry as accepted by the Government of India will be negotiated between the parties within one month from the date of settlement. It is interesting to note that it is nowhere mentioned either in the strike notice Ex. 86/W or in the settlement Ex. 87/W that there was any initial agreement between the Union and Shri Zarapcar that he would implement the recommendations of the Wage Board if other mine owners concerned in the region would do so. It is also nowhere mentioned that Shri Zarapcar had given assurance as deposed to by Shri Manohar Tukaram Tari as referred to above.

25. On 14-11-1968 the General Secretary had given another strike notice to Messrs Manohar Hiru Naik Parulekar, Mine Owner and M/s Janardhan Zarapcar, Raising Contractor, Pissurlem Mine. One of the demands in this strike notice relates to full implementation of the Central Wage Board for Iron Ore Mining Industry as approved by the Government of India. This strike notice nowhere mentions about the agreement and assurance in question. After the above mentioned strike notice, there was further settlement between the parties before the Assistant Labour Commissioner (C) Vasco-de-Gama on 16-12-1968 (Ex. 88/W). Term No. 3 of the settlement is as follows:—

"3. *Full implementation of the Central Wage Board for Iron Ore Mining Industry as accepted by the Government.*

It is agreed that the Variable Dearness Allowance which is being paid to the workers with effect from the 1st September, 1968 on the basis of the All India Consumer Price Index Number for working classes will be continued to paid as per the recommendations accepted by the Government.

It is further agreed that the implementation of the recommendations of the Wage Board regarding the other matters would be discussed mutually by the parties before the 15th January 1969 for a settlement. In the event of the parties failing to arrive at a settlement, either parties would approach the Assistant Labour Commissioner (Central) Vasco-de-Gama thereafter".

26. After this settlement Ex. 88/W, the strike notice was withdrawn. In this settlement also there is no reference about the alleged agreement or assurance in question. The circumstance that some recommendations of the Wage Board were agreed to be implemented and that in respect of the remaining recommendations the parties were to discuss and hold negotiations before 15-1-1969 indicates that there must not have been any initial agreement or assurance given to the employees as contended.

27. Evidence of Shri Sharad Chandra Janardhan Zarapcar Ex. 97/E on this point is as follows:—

"In 1967 November, there were strike in various mines. There was also strike in our mine. This strike might have taken place on 3rd November, 1967. It is not true that on 3rd November, 1967 I and my father went to the mine and assured the workers that we would give them Wage Board benefits and that they should give up strike.

On 3rd November, 1967 I went to the mine at about 10 A.M. My Father was not with me. When I went to the mine I asked the workers as to why they were already on strike. They told me that other workers had gone on strike for demanding Wage Board benefits. I told them that Wage Board benefits would apply to exporters and not to us *i.e.* the Raising Contractors. I told them that I would give them something which I can. On account of this assurance the workers called off the strike and resumed the work.

I gave them increase in pay from Rs. 13 to 20 per month from 1st February, 1968. I gave this increase for both monthly rated and daily rated employees. I had 30 to 35 monthly rated workers at that time. I had 15 to 20 daily rated workers. In addition to this I had some contract labours. That used to vary from 100 to 150. I had given increment to my employees during 66 to 68. I had given the increase to the employees for the month of October in each of the three years namely 66, 67 and 68. Increment was given not necessarily from the month of October. It might have been given from earlier period."

28. There can be no doubt from the evidence of Shri Sharad Chandra Janardhan Zarapcar, Ex. 97/E referred to above that he had given assurance to the employees on 3rd November, 1967 that he would give them something which he had given. But he had not assured them that he would give them all Wage Board benefits as deposed to by Shri Manohar Tukaram Tari, Ex. 85/W. If Shri Sharad Chandra Janardhan Zarapcar would have assured his employee that he would extend all Wage Board benefits to them and if the workers would have withdrawn the one day strike on account of this assurance, they would not have failed to make mention of this in their strike notice and settlements referred to above. This circumstance that they failed to do so supports the evidence given by Shri Sharad Chandra Janardhan Zarapcar, Ex. 97/E that he had not given assurance that he would implement all the recommendations of the Wage Board. It is true that Shri Sharad Chandra Janardhan Zarapcar had given some assurance. On account of this the workers had withdrawn the strike. That assurance was that Shri Zarapcar would give them some benefits. In pursuance of this assurance Shri Zarapcar had given some benefits to his employees *i.e.* increase in their pay by Rs. 13 to 20 per month with effect from 1st February, 1968. That is why there is no reference about this assurance in subsequent strike notice and settlement referred to above.

29. In short considering the oral and documentary evidence and the circumstances referred to above I am of the view that the Union has failed to prove the alleged agreement or assurance given to the employees that Shri Zarapcar would implement all Wage Board benefits as accepted by the Government of India with effect from 1st January, 1967.

30. Shri Vaz for the employees contends that the Wage Board has taken into consideration the capacity of the industry as a whole and capacity of the Iron Ore Industry in Goa region while making recommendations, and as these recommendations are unanimous the employees in question be not allowed to flout the recommendations.

31. Shri Desai for Shri Zarapcar contends that the Wage Board has not applied its mind on the basis of industry while recommending the wages for the employees working in Iron Ore Mining industry in India. According to him, only 30 mines in India produce 77 per cent of the total production of Ore. While the remaining 271 mines produce the balance of 23 per cent. The Wage Board has not taken into consideration the difficulties of 271 mines.

32. It is true that only 30 mines produce 77 per cent of the total production of Iron Ore in India. The remaining 271 produce the balance of 23 per cent. It however appears from the report of the Wage Board that it has taken the production of Iron Ore Mines working all over India into consideration. It has tried to take all points into consideration though it was very difficult for it to consider the difficulties of each and every mine from every region. In general the Wage Board has considered all points in favour and against mines concerned in general while making the recommendations.

33. Though the Wage Board has taken into consideration the capacity of the industry as a whole and the capacity of Iron Ore Mines in Goa Region, yet this will be no ground to debar the employer in question from taking a stand about his incapacity to pay the wages to his employees according to the recommendations of the Wage Board. In my opinion it is open to him to plead his incapacity to pay the wages to his employees as per the recommendation of the Wage Board with effect from 1st January, 1967. Hence the contention raised by Shri Vaz in this respect cannot be upheld.

34. Shri Vaz for the Union contends that the Wage Board has fixed wages on the basis of industry-*cum*-region principle, that practically the major portion of the industry is paying wages to its workmen in the industry as per the recommendations of the Central Wage Board and that on account of this the employees in question cannot be made exception. 13 companies referred in para. 7(xiii) of this judgement, from Goa region have implemented the recommendations of the Wage Board.

35. As the mine of Shri Manohar Hiru Naik Parulekar is in Goa Region, it is contended that Shri Zarapcar who is working on a portion of this mine as Raising Contractor should also implement the recommendations of the Wage Board to his employees and pay the same wages which other companies from Goa region are paying to their employees on the basis of industry-cum-region principle. I am unable to accept this contention because there is no evidence on record to show that the 13 other companies referred to above are comparable with the concern of Shri Zarapcar. If these 13 companies would have been comparable with the concern of Shri Zarapcar, Shri Zarapcar would have been required to pay the same wages to his employees to avoid dis-satisfaction amongst his employees working on the mines on the basis of industry-cum-region principle.

36. The 13 companies referred to above have implemented the recommendation of the Wage Board with effect from different dates. These companies are existting and having their business. The fact that they have paid the differences and continuing their business indicate that they have got capacity to bear the burden. On the other hand Shri Zarapcar's concern has ceased to function. Evidence on record shows that it incurred losses. It clearly shows that the 13 companies referred to above cannot be compared with the concern of Shri Zarapcar. Hence the defence of Shri Vaz that Shri Zarapcar should pay the same wages to his employees which the other 13 companies are paying as per recommendations of the Wage Board on the principle of industry-*cum*-region basis cannot be accepted.

37. Shri Desai for Shri Zarapcar contends that inasmuch as the Union has not adduced evidence to prove the classification of the workers working with Shri Zarapcar, the Wage Board recommendations cannot be implemented.

38. Shri Vaz for the employees has produced certain agreements between the Union and some other companies in connection with the categorisation of mining employees. They are at Ex. 116/W to 119/W. In view of this documentary evidence on record and copies from the Register of wages produced at Ex. 84/E and 95/E giving the names of employees, their nature of employment and pay, it cannot be said that there is no evidence for finding out the classification of the employees who were working with Shri Zarapcar. Hence the contention raised in this respect on behalf of Shri Zarapcar fails.

39. It is contended on behalf of Shri Zarapcar that Shri Zarapcar has no capacity to bear the burden that will be placed on him on account of implementation of the Wage Board recommendations. In support of this contention reliance is placed on the evidence of Income-Tax consultant Shri Vithal Yallojirao Pawar,

Ex. 98/E and various statements and balance sheets produced by him on record.

40. It appears from the statement of profits Section-wise, Ex. 106/E that there was a profit of Rs. 4,790.96 in the year 1966-67 in respect of mining contract business. There were losses during the years 1967-68 to the extent of Rs. 16,929.70 and in the year 1968-69 to the extent of Rs. 58,214.99. Shri Pawar speaks about the losses and the statement. There is absolutely no reason to disbelieve him. I am satisfied from his evidence that Shri Zarapcar did not make any profit in mining contract business during the years 1967-68 and 1968-69.

41. Shri Vaz for the Union contends that Shri Zarapcar has been doing the Raising of Ore from the year 1966 as Raising Contractor, that as a result of this contract with Shri Manohar Hiru Naik Parulekar Shri Zarapcar has become one of the richest man in the territory, that to begin with he had no proper mining machinary transport facilities, earth moving machinery and that within a period of two years of his working he purchased the machinery as mentioned in para. 7(i) of this judgement.

42. Shri Zarapcar has produced statement showing machinery solely used on Pissurlem Mine and its year of purchase at Ex. 101/E. It is clear from this list that major portion of the machinery was acquired before Pissurlem mine was taken on contract. Only few machinery was acquired during the period of contract of pissurlem Mine. In view of this documentary evidence and the clarifications given in the written statement Ex. 7/E para. 6 there can be no doubt that there is no substance in the contention of Shri Vaz that after taking the Raising contract Shri Zarapcar acquired machinery and became one of the richest persons in Goa. The Balance-Sheet and statement of account produced by Shri Zarapcar and the evidence of Consultant Shri Pawar go against this defence.

43. In short I am convinced from the evidence of Shri Sharad Candra Janardhan Zarapcar, Ex. 97/E and Vithal Yallojirao Pawar, Ex. 98/E alongwith other documents on record that Shri Zarapcar did not make profit in the mining contract business in the years 1967-68 and 1968-69 and that he was running his business at loss. It means that he had no ability and capacity to bear the burden of Wage Board recommendations.

44. Shri Vaz for the Union contends that the Wage Board granted minimum wages and that on account of this the question of paying capacity of Shri Zarapcar is immaterial and that he has to accept the Wage Board recommendations and to pay the wages to his employees as recommended by the Wage Board.

45. It is clear from para. 1.4, of the Report of the Central Wage Board for Iron Ore Mining Industry that the Board was to work out a wage structure based on the principles of fair wages as set forth in the Report of the Committee on Fair Wages.

46. It is common ground that the employees working in any concern must get the minimum wages *i.e.* bare living wages irrespective of the fact whether the concern concerned has any paying capacity or not. If the concern concerned has no paying capacity to pay the minimum wages it has no right to exist. It appears that in the opinion of the Fair Wages Committee the term of minimum wage is used in the context of not only providing bare minimum for the existence of a worker, but it also provides for something above. If the wages recommended by the Wage Board are something above the minimum it is necessary to consider the paying capacity of the concern concerned before the same can be made applicable to its employees.

47. Shri Manohar Tukaram Tari's evidence Ex. 85/W shows that there was no Canteen facilities or facility of giving residential quarters to the employees or providing free transport from the place of residence to the place of work or any medical facilities or Provident Fund or Gratuity. There can be therefore no doubt that the employees working with Shri Zarapcar were not geting any type of amenities. It however appears from the evidence of Shri Sharad Chandra Janardhan Zarapcar Ex. 97/E that he on his own accord increased the pay of the employees from Rs. 13 to 20 with effect from 1-2-1968 and gave them increments every year when they became due during the years 1966-67. It also appears from the settlement Ex. 88/W dated 16-12-68 that Shri Zarapcar agreed to give variable Dearness Allowance to his employees with effect from 1-9-1968 on the basis of the All India Consumer Price Index Number for working classes. It means that Shri Zarapcar had implemented part of the recommendations of the Wage Board as accepted by the Government of India.

48. Evidence on record shows that Shri Zarapcar has terminated the contract with Shri Parulekar in connection with the Pissurlem Mines and that he has stopped mining operation. Taking these facts into consideration and having regard to the fact that he has made efforts to give as much benefits to his employees as possible on the basis of the Wage Board recommendations. I am of the view that his action in not implementing the final recommendations of the Central Wage Board for Iron Ore Mining Industry accepted by the Government of India with effect from 1-1-1967 to full extent on the basis of his incapacity to bear the burden is justified.

49. Shri Manohar Hiru Naik Parulekar is the owner of Pissurlem Mines. Shri Zarapcar was the Raising Contractor in respect of part of the mine belonging to Shri Manohar Hiru Naik Parulekar. Shri Zarapcar was employing workers for getting the work done directly. He was also having sub-contractors for getting the work done. So far as the employees directly employed by Shri Zarapcar are concerned he was the principal employer. Shri Manohar Hiru Naik Parulekar owner of Pissurulem Mine had no concern with these employees. Hence Shri Manohar Hiru Naik Parulekar cannot be held responsible for the payment of wages to the employees of the Raising Contractors. The agreement between Shri Manohar Hiru Naik Parulekar, the Owner of the Mine and Shri Zarapcar, Raising Contractor nowhere mentions that the owner is responsible for wages of the employees employed by the Raising Contractor. In short, it will be clear from the above discussions that Shri Zarapcar was justified in not implementing the final recommendations of the Central Wage Board for Iron Ore Mining Industry as accepted by the Government of India in respect of the workmen employed by him with effect from 1-1-1967 and his employees are not entitled to any relief.

50. In the end I pass the following order:—

ORDER

(i) It is hereby declared that the action of the Management of Shri Manohar Hiru Naik Parulekar, Owner Pissurulem Mine and Messrs. Janardhan Zarapcar, Raising Contractors of Pissurulem Mine in not implementing the final recommendations of the Central Wage Board for Iron Ore Mining industry as accepted by the Government of India in respect of the workmen employed by the Raising Contractor Messrs Janardhan Zarapcar with effect from 1-1-1967 is justified and that his employees are not entitled to any relief.

(ii) Award Part VI is made accordingly.

(iii) No order as to costs.

(Sd.) N. K VANI,
Presiding Officer,
Central Government Industrial,
Tribunal No. 2, Bombay.

[No. 24/9/69-LR-I/LR-IV.]

S.O. 891.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the National Industrial Tribunal, New Delhi in the industrial dispute between the employers in relation to the management of Oil and Natural Gas Commission, Dehra Dun and their workmen, which was received by the Central Government on the 28th February, 1972.

NATIONAL INDUSTRIAL TRIBUNAL, NEW DELHI

In the matter of Reference under sub-section (1A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947).

REFERENCE NO. NIT-3 OF 1970

PRESENT:

Shri M. Chandra, Retired Judge, Allahabad High Court *Presiding Officer.*

PARTIES:

The Oil and Natural Gas Commission, Dehra Dun.

AND

Their Workmen.

APPEARANCES:

For the employer: Shri Jagdish Sarup, Solicitor-General, Shri B. Datta, Advocate.

For the Unions: Shri Raja Kulkarni and Shri V. K. Tambe, Advocate, for the All India ONGC Employees' Union (NFPW).

Shri M. C. Bhandare, Advocate, with Shri P. H. Parekh, Advocate, for the ONGC Employees Mazdoor Sabha.

Shri Ram Pal Singh, for ONGC Karamchari Union, Dehradun.

Shri D. R. Kuthari, for ONGC Workers' Association, Dehradun.

AWARD

The Central Government constituted this National Industrial Tribunal at Delhi by an Order No. 4/67/70-LR-IV dated 12th November, 1970 and referred to it for adjudication under sub-section 1A of Section 10 of the Industrial Disputes Act, a dispute between the Oil and Natural Gas Commission as given in the following schedule attached to the Order of Reference.

SCHEDULE

"What should be the amount, if any, of depreciation deductible under section 6(a) of the Payment of Bonus Act, 1965 as prior charge for the purposes of computation of available surplus.

2. Whether the following amounts are allowable for computation of Gross Profits under the Payment of Bonus Act, 1965 and if allowable, to what extent?

(i) Depletion of Producing Property: Rs. 96,78,070 (net, after deducting depreciation); and

(ii) Amortisation of Development Expenditure in areas other than Producing Properties: Rs. 4,65,22,374 (net, after deducting depreciation).

3. What should be the amount, if any, of Development Rebate allowable as per Payment of Bonus Act, 1965 and its bearing on the payment of bonus for the year 1966-67.

4. Whether the interest at Rs. 1,01,49,188 on loans from the Government of India charged in the Profit and Loss Account is allowable for the computation of Gross Profits under the Payment of Bonus Act, 1965?

5. What should be the amount deductible as direct taxes in terms of section 6(c) of the Payment of Bonus Act, 1965 for arriving at the available surplus.

6. Whether the losses incurred by the Management on the fixed assets and written off as such in the Profit and Loss Account at Rs. 11,26,050 are deductible as an allowable expenditure for the purpose of arriving at the Gross Profits under the Payment of Bonus Act, 1965?

7. Whether the amount of Rs. 88,88,020 charged in the Profit and Loss Account as Provision for Doubtful Debts should be added back to the Profit in the computation of Gross Profits under the Payment of Bonus Act, 1965?

8. Whether the amount of Rs. 59,47,077 not included in the sale proceeds of the year pending arbitration but shown as a part of the note in the Profit and Loss Account or the net amount of Rs. 24,25,532 finally determined as payable by the Award should be added to the income of the year?

9. *Determination of net profit.*—Whether the provisions of the Companies Act are applicable for the determination of net profit? If so, to what extent and in which respect?

10. *Royalty.*—Whether the amount of Rs. 1,89,17,630 covered in expenses of Rs. 4,62,55,499 charged towards production expenditure in profit and loss account should be added back for computation of gross profit in view of the fact that the said amount is an expenditure on royalties.

11. *Return on Capital.*—Whether the amount of Rs. 111.69 crores being funds advanced by the Government of India to ONGC for business under section 16 of the ONGC Act 1959, be deemed to be same as paid up capital as applicable to statutory corporations or as equity share capital applicable in the case of Indian Companies Act?

12. Whether the prior deduction on the basis of 8½ per cent on such advances of the Government claimed by the Commission is admissible for hte purpose of determination of available surplus under the Bonus Act? Or the capital of the Commission should stand on a different footing and return for the same worked out on the basis of the capital structure, *whether there is no share capital as recommended by Bonus Commission?*

13. *Transportation and Freight.*—Whether the expenditure under the head Transporation and Freight charged to profit and loss account which also include depreciation is allowable as an expenditure under the payment of Bonus Act? If so, what should be the amount allowable in this respect, and what should be the principles for such deductions?

14. *Computation of Bonus for* 1966-67.—On the basis of the decisions on the points referred to above, what should be the bonus payable to workers for the year 1966-67 as per the Bonus Act.

The dispute relates to the bonus for the year 1966-67. The Oil and Natural Gas Commission (hereinafter referred to as ONGC) initially paid 4 per cent *ex-gratia* bonus, as the balance-sheet and accounts were not ready. This unilateral decision and payment of only 4 per cent as bonus was objected to by the workmen and accepted under protest. The ONGC supplied the balance-sheet for the year 1966-67 when they were ready. In view of certain issues of principle, which are now before the Tribunal, no settlement regard-reached except for only an interim agreement regarding bonus for the years 1966-67, 1967-68 and 1968-69. The interim agreement provided for payment of bonus at the following rates:

For 1966-67—5 per cent.

For 1967-68—6½ per cent.

For 1968-69—8 per cent.

It was also agreed that a Reference would be made to a National Tribunal on certain points of principle raised by the Workmen's Associations and Unions regarding the computation of profits under the Payment of Bonus Act, 1965 that the terms of reference would be agreed to by the management and the Unions/Associations after mutual consultation, and that on the basis of the findings of the Tribunal on the aforesaid Reference, re-computation of the profits for the year 1966-67 and for the subsequent years would be made. The percentages as agreed to above were to be reconsidered if the allocable surplus admitted of higher percentages. In case it is found that there was no allocable surplus in these years under the Payment of Bonus Act, 1965, then the interim payments agreed upon would be termed as final and the matter would stand closed for the years covered by the agreement. The percentages referred to in the agreement were to be calculated on the same principle relating to salary as adopted for the payments made for the years 1966-67 and 1967-68.

It is not disputed that an Organisation known as the Oil and Natural Gas Directorate of the Government of India was set up in 1955 and converted into a high-power Commission, on 14th August, 1956. The Oil and Natural Gas Commission was established on 15th October, 1959 by the Oil and Natural Gas Commission Act, 1959 which received the assent of the President on September 18, 1959.

The ONGC Employees Mazdoor Sabha, Baroda, represents a number of workmen of the ONGC.

Briefly stated, their case is this. A 4 per cent *ex-gratia* bonus was paid by the ONGC because its accounts were not ready. The accounting system of the Commission suffers from discrepancies and ambiguities. The balance-sheet and profit and loss account do not reflect the correct picture in respect of different items of expenditure, for instance, salaries, wages and bonus. As for item No. 1 of the Reference, the depreciation shown in the profit and loss account is Rs. 25,00,743 depreciation added back for computation of gross-profits by the ONGC is Rs. 2,00,22,006 and depreciation claimed and deducted as per Income-Tax Act is Rs. 3,85,10,524. In view of the provisions of Section 6(a) of the Payment of Bonus Act and Section 32(1) of the Income-Tax Act, only the depreciation allowable as per Income-Tax Act on plant, machinery, buildings and furniture to the extent provided thereby should be allowed and the entire depreciation by which the fixed block has been reduced be added back to net profits and depreciation be deducted subject to the detailed evidence and proof for the same. Regarding Item No. 2 of the Reference, the ONGC has shown Production Expenditure as Rs. 4,52,53,499 including items of depreciation of Rs. 56,25,930 and depletion of producing properties as Rs. 96,78,070. These items are in the nature of capital expenditure and should consequently be excluded from the profit and loss account as revenue expenditure. Moreover, the Sabha apprehends that a portion of these items relates to expenditure included in the previous years. As for amortization referred to in sub-item (ii) of item No. 2, an expenditure of Rs. 5,42,04,123 has been debited in the profit and loss account towards Development Expenditure for areas other than producing properties written off. The Payment of Bonus Act does not permit any writing off of the expenditure incurred in previous years. The whole of the year is taken as a basis and any writing off of expenditure of previous years is not allowable. Both the amortization and depreciation included in the accounts reflect an expenditure towards past years' expenses. The amount is not allowable under the Payment of Bonus Act and ought to be added back for the purpose of calculation of gross profits. As regards item No. 3 of the Schedule, the Commission claimed a sum of Rs. 9,64,62,962 towards development rebate under the Income-Tax Act while the Development rebate shown in the Profit and Loss Account was Rs. 4,68,94,444. Sections 33 and 34(3) of the Income-Tax Act deal with Development Rebate. It is obligatory for the ONGC to prove that provisions of these Sections have been complied with. No claim for any prior period should be allowed to be included in the alleged claim of development rebate including development rebate in respect of plant, machinery, buildings and furniture during previous years, since the arrears of development rebate are not allowable under the Payment of Bonus Act. The claims made for the previous years were not at all permissible. The development rebate for the purpose of Payment of Bonus Act is to be confined to the additions made to plants and machinery only during the year in question and is subject to the conditions and restrictions provided under the Income-Tax Act. As for item No. 4, Rs. 1,01,49,188 have been claimed as loans from the Government of India. The balance-sheet shows that the total loans from the Government of India are Rs. 21,64,68,254 and the total loans and advances effected by the Commission are of the order of Rs. 14,59,75,260, including non-interest bearing advances also. Equities between the parties for the purpose of ascertainment of the correct amount of interest allowable to the ONGC have to be worked out. Regarding item No. 5, the Commission should be ordered to furnish particulars of the tax payable and actually paid and to produce its Income-Tax returns and Assessment Orders as well as the Challans for payment of the tax due. As for Item No. 6 the losses on fixed assets and capital losses are not allowable under the Bonus Act and the capital losses must be added back to the net profits in order to arrive at the gross profits. Expenses on account for the past years, are not allowable. Nor are the capital losses allowable as prior charge. All such amounts included have to be added back for the purpose of computation of gross-profits. So far as item No. 7, which relates to the provision for doubtful debts amounting to Rs. 88,88,020, is concerned such a provision for doubtful debts is not allowable under the Payment of Bonus Act. Nor is any element of provision for previous years included in these doubtful debts permissible. The amount provided for doubtful debts or expenditure towards writing off doubtful debts should be added back for computation of gross profits. As for Item No. 8, the amount of Rs. 59,47,077 has not been included in the sale proceeds of gas in view of a pending arbitration. Supply of gas from Cambay and Ankleshwar projects to Gujarat State Electricity Board has been valued at the rate of Rs. 80 and Rs. 100 per thousand cubic metres and provisions to the extent of Rs. 40 and Rs. 60 per thousand cubic meters have been made. An Award has now been given by the Arbitrator and the whole of the amount calculated at the price awarded by the Arbitrator should be added back for the purpose of calculation of gross profits. This is the income which the Commission has already realised and this amount is eligible for computation of gross profits. Regarding Item No. 9, Section 29 of the Oil and Natural Gas Commission Act, 1959, provides that the ONGC shall be deemed to be a Company and consequently the accounting system followed by the Commission is not according to the provisions of the Payment of Bonus Act. The balance sheet does not reflect a true picture of the financial affairs and specific heads of expenditure under which the expenses have been made. Section 2(9) of the Payment of Bonus Act envisages that all the accounts, balance sheet etc. should be maintained in accordance with the Companies Act. Section 349 of the Companies Act gives principles on which net profits of the Company are to be determined. The balance-sheet and profit and loss account should, therefore, be evaluated according to the allowability of items of expenditure as per Companies Act and the net profit should be worked out accordingly. As for royalty (Item No. 10), an amount of Rs. 1,89,17,630 covered in the expenses of Rs. 4,52,55,499 charged towards production expenditure in the profit and loss account, should be

added back for computation of gross profits as this item of expenditure is in the nature of Capital Expenditure and is not allowable as a prior charge for deduction. So far as Items 11 and 12 are concerned, the amount of Rs. 111.69 crores, shown by the Commission as Capital cannot be placed on par with the Share Capital because of the difference both in contents and form. The Audit reported that the pattern of financing had not so far been finalised and that the Government had not fixed up or decided about the terms and conditions for the advances from the Central Government. A clear distinction should be made between the Paid-up Capital and Working Capital and a prior deduction of Rs. 8½ per cent as claimed amount cannot be made. As for item No. 13 regarding transportation and freight head, the amount claimed in the profit and loss account is Rs. 3,37,89,781 including Rs. 41,13,544 which also includes other items of expenditure under various heads. Only allowable items of expenditure should be taken as items of expenditure under this head and the whole expenditure under the head Rs. 3,37,89,781 is not allowable. Whatever amount is considered allowable should be taken after the claim has been established by evidence and proof. The computation of bonus for 1966-67 under item No. 14 has to be made on the basis of the decisions on the points mentioned above.

The ONGC Karamchari Union and ONGC Workers Association, Dehradun adopted the Written Statements filed by the ONGC Employees Mazdoor Sabha, Baroda.

The Tel Avam Prakritak Gas Ayog Karamchari Sangh, in their Written Statement, raises the same pleas as those of the ONGC Mazdoor Sabha on most of the points. It contends further that for the purpose of bonus, capital expenses cannot be deducted under the Payment of Bonus Act and that Section 42 of the Income-Tax Act has no bearing on the question of amortization for the purpose of the Payment of Bonus Act. According to them, amortization is nothing more than recouping of the capital expenditure incurred in previous years and as such is not allowable as deduction under the Payment of Bonus Act. The Karamchari Sangh also contends that the interest to the extent the loans from the Government of India have been converted into capital expenditure, cannot be treated as a prior charge on profit and loss account for bonus purposes. The Sangh further contends that no part of the sum of Rs. 11,26,050 is deductable as an allowable expenditure under Section 6(d)(1) of the Payment of Bonus Act since it deals with revenue losses only and that the losses incurred by the Commission during 1965-66 which was a profit year and deductions if any, permissible should be allowed from that accounting year under the Payment of Bonus Act. Also, on these capital items, depreciation has been charged and these assets have been sold off. Losses on sale of capital assets, if any, during the year 1965-66, cannot be charged as an allowable expenditure under the Payment of Bonus Act during the year 1966-67.

The All India ONGC Employees Union (NFPW) applied for being made a party. The other parties had no objection. They were accordingly made a party to the dispute and they filed its Written Statement. The pleas contained in their Written Statement are mainly the same as the pleas taken by the ONGC Employees Mazdoor Sabha. The All India ONGC Employees Union (NFPW) further contended that the loans advanced by the Commission to its subsidiary, namely, Hydro Carbon (India) Private Ltd. is in the nature of capital loan and the interest paid by the Commission to the Government of India on such loan is in the nature of capital expenditure. Consequently, the amount of interest on that part of the loan advanced by the Commission to Hydro Carbon (India) Pvt. Ltd. is not an admissible expenditure. They have also alleged that losses on fixed assets are in the nature of capital losses and cannot consequently be allowed as an admissible expenditure for the purpose of Payment of Bonus Act. Moreover, these losses, according to them, pertained to earlier years and not to the year in question.

The Written Statement by the ONGC Employees Union (NFPW) is also on behalf of the ONGC Employees Union, Sibsagar and ONGC Employees Union, Dehradun.

The ONGC first gives, in its Written Statement of Claims, the various relevant provisions of the ONGC Act and the Rules framed by the Central Government thereunder. The form in which the accounts have to be maintained by the ONGC is prescribed by the Government under Rule 14, which authorises the Government to do so. The accounts of the ONGC are duly audited by the Comptroller & Auditor General of India. Printed copies of Annual Reports for the years 1965-66, 1966-67 and 1967-68 were filed along with the Statement as Annexure II. According to the ONGC, it is the only public sector establishment engaged in the exploration and exploitation of hydro carbon resources of the country and is carrying on extensive exploration for oil/gas in different parts of the country since 1959. Under a joint-Structure Agreement dated 17th January, 1965 between the National Iranian Oil Company, on the one hand, and the Oil and Natural Gas Commission, AGIP, S.P.A. (a company of the Italian enterprise, known as Ente Nazionals Idrocarburi (ENI) and the Phillips Petroleum Company, on the other the latter three jointly undertook petroleum operations including exploration and production of hydrocarbons in District I of the Persian Gulf. The Commission's interests and rights in the said Joint Structure Agreement were transferred to a newly formed "wholly owned" subsidiary namely, Hydrocarbons India Private Limited in April 1965 but the Commission was not absolved of the obligations undertaken by it under the Joint Structure Agreement.

The ONGC gives in detail its case under each one of the items referred for adjudication as follows:

Item 1:

The ONGC debited in its Books of Accounts Rs. 200.22 lakhs by way of depreciation under various heads of the Profit and Loss Account and has added back this amount under item 2(b) of the Second Schedule to the Payment of Bonus Act, 1965 in accordance with Section 4(B) read with Item 2(b) of the Second Schedule. The ONGC claims (in its Written Statement) that it is entitled under Section 6(a) of the Payment of Bonus Act to deduct Rs. 376.84 lakhs from the gross profits as Prior Charges by way of depreciation for the year 1966-67 in accordance with the provisions of sub-section (1) of Section 32 of the Income-Tax Act, Subject to any revision on completion of the Income Tax Assessment Order.

Item 2:

The ONGC produces crude oil and gas from producing fields and the revenue from the sales thereof forms the income of the Commission. The expenditure incurred by the ONGC in developing such fields is to be recovered over a period of time out of such revenues. The ONGC has estimated the producing life of the fields at the economic rate of production as 15 years. The ONGC claims that this expenditure has been proportionately recouped by it from the revenues in the Profit and Loss Account. In this manner, it has claimed Rs. 96,78,070 as 1/15th of the value of the producing fields by way of charges and alleges that the charge represents only the share of the cost the ONGC has incurred in locating and developing the fields and that any determination of profits without it would be incorrect. The ONGC carries on extensive search to develop available petroleum resources of the country with the object of producing and selling oil and gas. All its efforts do not result in success. Quite often, the search extends over a long period. Instead of charging all such expenditure each year, it has decided to recoup it over a period of time on a uniform basis. The ONGC, consequently, claims a sum of Rs. 4,65,22,374 (less proportionate element of depreciation) by way of an amount allowable as deduction for computing

gross profits. The amount represents 1/15th of the expenditure incurred in the areas other than producing properties upto the end of the year 1966-67 and has been charged as an expenditure in the Profit and Loss Account. According to the ONGC, this keeps the element of such amortizable costs consistent over a period of time and does not result into violent changes in the figures of profit or loss and is also based on the well-known and commercially accepted accounting practices of the Petroleum Industry in India and abroad. The admissibility of such expenditure, is recognised under the Income-Tax laws in India and abroad. The expenditure includes manpower, material and other costs incurred by the Commission but does not, include any Capital Expenditure.

Item 3:

The ONGC claims that it is entitled to Rs. 11,75,68,003 as Development Rebate for the Accounting Year 1966-67 under Section 6(b) of the Payment of Bonus Act read with Section 33 of the Income-Tax Act but claims only Rs. 9,64,62,962 as Development Rebate in view of the provisions of Section 34(3) of the Income-Tax Act, since the ONGC had, upto 31st March, 1967, created a Development Rebate Reserve amounting to Rs. 7,23,47,222 only and Section 34(3) of the Income-Tax Act imposes a condition for creation of Reserve to the extent of 75 per cent of the Development Rebate to be actually allowed. The ONGC urges that it is entitled to deduct as prior charge any amount by way of Development Rebate worked out in accordance with the provisions of the Income-Tax Act which permits carrying forward of the Development Rebate and that the Development Rebate Allowance is not to be restricted to the additions during the year in question.

Item 4:

The ONGC has to pay interest on the monies it owes to the Central Government, including the loans advanced by the Central Government to the Commission. The ONGC also earns interest on the loans it advances to Hydrocarbons India Private Limited. After deducting the interest earned by the ONGC, it has charged Rs. 1,01,49,188 as the net amount of interest on account of the finances used in the business of the Commission. It is incorrect that this sum is claimed as loan from the Government of India. It is merely interest on the loan The ONGC claims that, like any other businessman, it is entitled to take into account its liability to pay interest and show it in the Profit and Loss Account. According to the ONGC, neither the loan advanced by it to Hydrocarbons India Private Limited is in the nature of a Capital Loan nor the interest paid by the ONGC to the Central Government on the loans advanced by them to the ONGC is in the nature of Capital Expenditure. It is not at all relevant how the loan borrowed by the ONGC was utilised by it.

Item 5:

The ONGC contends that Direct Taxes to be deducted under Section 6(c) of the Act are to be calculated as provided under Section 7 of the Payment of Bonus Act irrespective of the actual amount of tax which the Commission may be required to pay under the Income-Tax Act and that it is unnecessary to produce its Income-Tax Returns and Assessment Order.

Item 6:

According to the ONGC, it is entitled to deduct Rs. 11,26,050, the losses incurred by it on the fixed assets and written off as such in the Profit and Loss Account, as an allowable expenditure for the purpose of arriving at the gross profits under clause 6(d)(i) of Second Schedule to the Payment of Bonus Act 1965. The Income-Tax also, says the ONGC, provides for depreciation on such assets Having taken into consideration this item in preparing the Profit and Loss Account, the ONGC did not consider it in computing the gross profits.

Items 7, 8, 9 and 10:

As for item No. 7, the ONGC contends that in the year in dispute it was found that this sum of Rs. 88,88,020 was not recoverable as the Indian Oil Corporation and the Burmah Shell and the Esso I & C had not honoured the claim of the Commission for the price of crude oil supplied to their Refineries, namely, Koyali and Bombay Refineries, respectively. Since they had not till then become bad debts, they were treated as 'doubtful debts' and a provision was made accordingly in the Profit and Loss Account for the year 1966-67 and that there was no question of adding back this amount in the computation of gross profits.

Regarding item No. 8, the ONGC contends that the Award was given in September, 1967 and the incidence of additional sale proceeds and the expenditure on sales-tax and royalty stands included in the Profit and Loss Account of the year 1967-68 and that the ONGC was consequently entitled to take into consideration the sum of Rs. 59,47,077 in preparing the Profit and Loss Account for the year 1966-67.

As for Item No 9, the ONGC pleads that it is a Statutory Corporation and not a Company defined under the Companies Act and that consequently there was no question of applying the provisions of the Companies Act to the ONGC in determination of net profits.

Regarding item No. 10 (Royalty) the ONGC contends that the Commission is a Lessee under Rule 5 of the Petroleum and Natural Gas Rules and that the Royalty was paid in pursuance of Rule 5 of the Petroleum and Natural Gas Rules. The Commission was liable to pay for 1966-67 the Royalty of Rs. 1,89,17,630 to the Gujarat State Government and it being in the nature of expenses, was rightly debited under the Profit and Loss Account and should not be added back for computation of gross profits being a Production Expenditure of the year and not a Capital Expenditure.

Items 11 and 12:

The ONGC contends that under Section 6(d) of the Payment of Bonus Act read with Third Schedule to the Payment of Bonus Act, the ONGC is entitled to deduct a sum calculated at 8.5 per cent of the Paid-up Capital at the commencement of the Accounting Year, as a prior charge on the entire Capital of the Commission amounting to Rs. 111.69 crores at the commencement of the year 1966-67. The ONGC further pleads that no question of Equity Share Capital arises as the provisions of the Companies Act are not applicable to a Corporation like the Commission.

Item 13:

The ONGC gives the following break-up of the Expenditure under the head "Transportation and Freight" charged to Profit and Loss Account:—

(i) Railway freight paid on the crude transported to Bombay and sold—Rs. 2,85,60,650.

(ii) Operational and maintenance costs of crude and gas pipelines through which the oil and gas were transported to the buyers and sold—Rs. 11,15,587.

(iii) Depreciation on the transportation equipment, including pipelines —Rs. 41,13,544.

The amount of Rs. 41,13,544 is included in the sum of Rs. 200.22 lakhs (depreciation) which has been added back by the Commission in its computation of gross profits. The balance of Rs. 2,96,76,237 represents, according to the ONGC, expenditure on transportation of its products and is allowable as expenditure in the Profit and Loss Account and deductable under the Payment of Bonus Act.

Item 14:

Regarding the amount of bonus payable, the Commission contends that in accordance with Annexure IV

to the ONGC's Written Statement, no bonus is payable to the workmen for the year 1966-67 under the Payment of Bonus Act. It further contends that the ONGC sold the goods produced by it for the first time in 1962-63 under Section 16(1)(b) of the Act and that even the minimum bonus under Section 10 will be payable only in and from 1968-69

Issues:

The points for determination arising out of the pleadings of the parties are covered by items 1 to 14 of the Schedule attached to the Order of Reference. They are, thus, treated as Issues 1 to 14.

Findings:

Issue 9: Determination of net profit.

Whether the provisons of the Companies Act are applicable for the determination of net profit? If so, to what extent and in which respect?

The Oil and Natural Gas Commission was established under Sec. 3(1) of the Oil and Natural Gas Commission Act, 1959. Under sub-section (2) of section 3, the Commission is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and sue and is to be sued by the "said name". It is, thus, a Statutory Corporation being the creation of the Corporation Act and not a Company under the Companies Act. Section 3 of the Companies Act defines a Company and also a public company. A Company under this Section means a Company formed and registered under the Companies Act and an existing company formed and registered under any of the previous Companies laws specified in the sub-section. Sub-section (18) of Section 2 defines a Government Company as a Government Company within the meaning of Section 617, under which a Government Company is one in which not less than 51 per cent of the paid up share capital is held by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments and includes a Company which is a subsidiary of a Government Company thus defined. Section 619-A provides that the Central Government shall cause an Annual Report on the working and affairs of that Company to be prepared as directed in the Section and to be laid soon after the preparation before both Houses of Parliament together with a copy of the Audit Report and any comments upon or supplement to the Audit Report made by the Comptroller and Auditor General of India. Sub-section (2) of Section 619-A makes similar provisions for laying of the Report before the State Legislature together with a copy of the Audit Report and the comments thereupon if the State Government is a member of a Government Company. Section 620 deals with the powers of the Central Government to modify the Act in relation to Government Companies. For the application of Sections 619 and 620 of the Companies Act, it is however essential that the ONGC must first be a Company under Sec. 617 of the Act. The ONGC was not incorporated under the Companies Act. There is no share capital and there are no members of the Corporation. Sections 85, 86, 91, 92 and 94 of the Companies Act all deal with share capital. The ONGC is a Public Corporation and a Public Corporation is distinct from a Company.

L. C. B. Gower in his Book "The Principles of Modern Company Law" dealt with Public Corporations. According to him, a Public Corporation is a "type of body set up to operate nationalised industries or for the organisation of other public enterprises and services." The Corporations are accordingly classified by him into: (i) "commercial corporations" designed to run an industry or public utility according to commercial principles, although subject to a measure of ministerial control and (ii) "social service corporations" designed to carry out a particular social service on behalf of the Government. The ONGC is clearly a "commercial corporation" as observed by Gower. "In effect, therefore, the corporations are statutory companies differing from others in that neither the Companies Acts nor the Companies Clauses Acts apply to them, the whole statute law applicable being contained in their creating Acts. It seems clear, however, that the general common law of corporations will govern them except in so far as this is expressly or impliedly modified, and that many of the judge-made principles of company law will be equally applicable to this more recent growth. But in applying common law principles recognition must be given to the consequences flowing from their duel role as commercial enterprises and public authorities. The most obvious and startling difference is that a public corporation has neither shareholders nor share capital."

As observed by Donning L. J. in his judgment in Tamlin V. Hannaford (1950) 1 K.B 18, C.A. at p. 23 "The significant difference.....is that there are no shareholders to subscribe the capital or to have any voice in its affairs....."

It is, thus, clear that in English Law, there is a world of difference between a Public Corporation and a Company governed by the Companies Acts and the Companies Clauses Acts. Neither the Companies Acts nor the Companies Clauses Acts apply to public corporations. The same is the position with regard to the ONGC in India, and here also the Companies Act will not apply to this Public Corporation which will be governed by the ONGC Corporation Act itself.

As mentioned by William A. Robson in "Nationalized Industry and Public Ownership" a public corporation is the most important invention of the twentieth century in the sphere of Governmental Institutions and is to be found in one form or other in many different countries all over the world, for instance, Britain, U.S.A.; France, Belgium and many other continental countries and Common Wealth countries. Public authorities enjoying various degrees of autonomy had been known in the past but the public corporation of today has special distinguishing characteristics as an organ of public enterprise which has been adopted by many countries including India. A very important aspect, as pointed out by William Robson, is that a public Corporation has no shareholders in the ordinary sense of the term. Another important leading principle of public corporations is that they have "self-contained finance". Capital development is usually financed out of public funds. Annual subventions are also given from public money in aid of current expenditure. There is political control on the one hand and managerial freedom on the other. The two are achieved by providing for reservation of certain powers of decision by the Ministers answerable to Parliament in certain matters of major importance while leaving everything else to the discretion of the public corporation acting within its legal competence.

W. Friedmann, in his Article on "The New Public Corporations and the Law" in the Modern Law Review, Vol X at P. 235 also emphasises that a public corporation has no shares and no shareholders and that its shareholders, in a symbolic sense, is the nation represented through Government and Parliament. The responsibility of the public corporation will then be to the Government and to the Parliament through a competent Minister. The public corporation has also the legal status of a corporate body with independent legal personality. Friedmann also speaks of an industrial or commercial public corporation and social service corporation. The ONGC, as I have already mentioned, belongs to the first category. A public corporation being so widely different from a joint stock company or a company, the principles of the Companies Act cannot be made applicable to the ONGC in the determination of net profits.

The ONGC Act, 1959 itself prescribes the manner in which the accounts of the Commission have to be

maintained and Annual Statement of Accounts including the Profit and Loss Account and Balance Sheet is to be prepared and audited.

The ONGC Employees Mazdoor Sabha complain that the accounts were not maintained as provided by the Companies Act and that Section 349 of the Companies Act lays down the principles on which net profits of a Company are to be determined.

As Contended by the learned counsel for the ONGC, apart from the fact that Section 349 of the Companies Act does not apply to the ONGC, there is also the difficulty that this Section lays down the requisites for determining the net profits of a Company for the purpose of Section 348 only. Sub-section (2) also refers back to the computation "aforesaid" i.e, for the purpose of Section 348. The same is the position with regard to other sub-sections of Section 349. Section 348 deals only with the remuneration for the Managing Agents. There is no question of Managing Agency in this Corporation. The Commission has to keep its accounts in the statutory forms prescribed by the Government of India in consultation with the Comptroller and Auditor-General of India in view of the provisions of the ONGC Act and the Rules framed thereunder. It is further clear from Section 29 of the ONGC Act that the provisions of the Companies Act do not apply to the ONGC. Section 29 provides that the Commission shall be deemed to be a Company for the levy of any tax or fee by the Central Government or State Government and shall be liable to pay such tax or fee accordingly. If the Commission were to be in fact a Company under the Companies Law, there was no need to enact a provision like Section 29 in the ONGC Act for the limited purpose of the levy of any tax or fee. Nor is there any thing to show in the Payment of Bonus Act itself that provisions of that Act and the method of calculation of bonus provided therein is based on the Companies Act and the accounting system followed by the Companies. The Payment of Bonus Act itself makes detailed provisions for the purpose of calculation of bonus and there is no provision in the Act incorporating the provisions of the Companies Act either expressly or impliedly for making these calculations.

Clauses 8, 9 and 10 of Section 2 of the Payment of Bonus Act define a Banking Company, a Company and a Cooperative Society. Clause 11 of this Section defines a Corporation and expressly excludes a Company or a Cooperative Society.

There is, thus, no question of the application of Section 349 of the Companies Act to the ONGC. It need not be mentioned that the Managing Agency System has already been abolished. That is the reason why Section 348 has been deleted in the Companies Act.

Section 618 of the Companies Act deals with a Government Company. But there is no Managing Agent in the ONGC even if it is regarded as a Government Company (although I have held that it is a corporation and not a Government Company under the Companies Act).

Section 211 of the Companies Act provides for the form and content of balance-sheet and the profit and loss account of a Company. The form is prescribed in Schedule VI of the Companies Act. Part I of Schedule VI deals with the balance-sheet and Part II with the Profit and Loss Account. In respect of the Profit and Loss Account and the balance-sheet, Section 22 of the ONGC Act specifically provides that the Annual Statement of Accounts including the Profit and Loss Account and the Balance-sheet shall be prepared, as already mentioned, in accordance with such general directions as may be issued and in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India. Section 211 cannot, therefore, apply to the ONGC.

Shri Bhattacharjee audited the accounts of the ONGC. He had this authority under Section 22 of the ONGC Act. The accounts have to be sent to Government which lays it before the Parliament. The ONGC Rules (Exhibit M-1) deal with the form of accounts. Rules 15 to 17 provide for forms to be specified by the Government in consultation with the Comptroller and Auditor General of India. Rule 18 deals with the preparation and submission of Annual Report and Annual Accounts, Rule 20 with the propriety and irregularity of accounts, Rule 21 with the publication of annual accounts, Rule 23 with periodical returns. The form prescribed by Government is Exhibit M-40.

Exhibit M-25 is the Accounts Manual. Chapter-I of the Manual deals with the scope of the Manual, amendments to the Manual and the system of accounts, along with other matters. It is admitted that the ONGC maintains the Mercantile system of accounting.

Appendix to the Accounts Manual (Exhibit M-25) deals with Charts of Accounts as follows:

A-Fixed Assets: Items I to V deal with free hold land, lease-hold land, buildings, railway siding, roads; bridges and culverts respectively. Items VI to XVII deal with Plant and Machinery, Tools and Equipment, Transportation Vehicles, Storage Tanks, Pipelines, Tents and Accessories, Furniture and Fixtures, Trade Marks, Patents and Designs, Producing Property, Capital works-in-progress, Capital Equipment-in-Transit; and Capital Equipment Transfer Account respectively.

Page 36 of Exhibit M-3 (Annual Report and Accounts 1966-67) is in accordance with this item: A-Fixed Assets.

Heading 'B'—Investments: Items I to V deal with Investment in Government and Trust Securities; Investment-in-shares; Investment in Subsidiary Companies; Other Investments and Investment in Project respectively. Page-31 of Exhibit M-3 deals with Investments and is in accordance with this Heading 'B'-Investments.

Heading 'D'—Miscellaneous Expenditure: gives the various items under this head. It corresponds to page 33 of Exhibit M-3.

Heading 'E'—Liabilities: corresponds to page 30 of Exhibit M-3: Liabilities.

'F' is another heading of Expenditure.

Heading 'G' deals with Receipts. Then there are Explanatory Notes to the Chart of Accounts at pages XXIV and XXVII. At page XXVI they deal with current Assets and Development Expenditure. All that is mentioned in the Appendix have been taken into consideration by the ONGC in their Annual Report. The ONGC's reply to the Interrogatories on Affidavit also says that the accounts were prepared in the form prescribed. In fact, the main objection of the workmen is not to the figures but to the principles. Since the accounts have been audited by the Comptroller and Auditor General of India, placed before the Parliament and published in the Gazette, it cannot, unless there is weighty evidence to the contrary, be said that the accounts were not maintained as required by the Rules.

The statement of Shri Vaidyanathan (MW-2) on oath, shows that the Manual was approved by Government in consultation with the Comptroller and Auditor General. Shri Tembe and Shri Raja Kulkarni on behalf of the workmen also stressed the importance of this Manual. Shri Vaidyanathan further states that the original balance-sheet of page 34 of Exhibit M-3 bears the signatures of all the officers mentioned therein. On the original of page 36 of Exhibit M-3 he proves the signatures of Shri M. V. S. Sarma. On the original of page 38 of Exhibit M-3, he proves the signatures of all the persons whose names occur on this page. It appears from the cross-examination of MW-2 (Shri Vaidyanathan) by Shri Tembe that there had been amendments to the Accounts Manual during the period of Shri Vaidyanathan's service. These amendments have been separately filed as Exhibit M-37. Shri

Tiwari (MW-1) was also cross-examined on the system of accounting. The fact that the Manual has been approved by Government in consultation with the Auditor General has not been seriously challenged in cross-examination.

Section 4 of the Income-Tax Act, 1961 and Section 3 of the Income-Tax Act, 1922 are charging Sections. A person has been defined in Section 2(31) of the Act, 1961. Under clause 7 of sub-section (31),) a Corporation is a 'person'. Under item 82 of the Schedule VII of the Constitution, dealing with taxes and income other than agricultural income, Parliament can say how a person is to be taxed. The Parliament can, therefore, say that for the purpose of taxation such a Corporation as the ONGC will be deemed to be a Company. Thus, the ONGC is deemed to be a Company only for the purposes mentioned in Section-29 of the ONGC Act by the Parliament and not for other purposes. Exhibit M-36, an agreement between the Central Government and the ONGC also specifically takes notice of the fact that the ONGC is a Company for the purposes of taxation under Section 29 of the ONGC Act. But it is to be deemed a Company for this limited purpose only.

It is, therefore, clear that the accounts and the balance-sheet of the ONGC have to be in the form prescribed by the Rules framed under the ONGC Act and not by the Companies Act. It is equally clear that the provisions of the Companies Act are not applicable to the ONGC for determination of net profits.

I find this Issue accordingly against the workmen.

Issue 10: *Royalty*:

Whether the amount of Rs. 1,89,17,630 covered in expenses of Rs. 4,52,55,499 charged towards production expenditure in profit and loss account should be added back for computation of gross profit in view of the fact that the said amount is an expenditure on Royalties.

Under Rule 10 of the Petroleum and Natural Gas Rules, read with Section 5 of the Oil Fields Regulation and Development Act, 1948, a Lessee has to pay to the State Government a royalty of Rs. 7.50 per matric ton of crude oil and 10 per cent of the value at the well-head of natural gas obtained by the lessee. As a lessee, under Rule 5, the ONGC had to pay Rs. 1,89,17,630 to the Gujarat State Government as royalty. It has been included in the production expenditure of Rs. 4,52,55,499 mentioned in the Profit and Loss Account. It was clearly a Production Expenditure debitable to the Profit and Loss Account.

On behalf of the workmen it was contended that it was in the nature of Capital Expenditure and was not allowable as a prior charge for deduction. It was also contended that the Commission should have produced the agreements between it and the various State Governments under which royalty was paid. These contentions are without force. There is no question of production of agreements relating to royalty as there is no question of any agreements when royalty is a statutory payment under the Petroleum and Natural Gas Rules framed under the Act and is not a Capital Expenditure but a Production Expenditure and was rightly mentioned in the Profit and Loss Account for the year ending 31st March, 1967.

I find this Issue against the workmen.

Issues 11 *and* 12:

Whether the amount of Rs. 111.69 crores being funds advanced by the Government of India to ONGC for business under section 16 of the ONGC Act, 1959 be deemed to be same as paid up capital as applicable to statutory corporations or as equity share capital applicable in the case of Indian Companies Act?

Whether the prior deduction on the basis of 8½ per cent on such advances of the Government claimed by the Commission is admissible for the purpose of determination of available surplus under the Bonus Act? Or the capital of the Commission should stand on a different footing and return for the same worked out on the basis of the capital structure, whether there is no share capital as recommended by Bonus Commission?

We have already seen under Issue No. 9 that the ONGC is not a Company, Consequently, no question of any equity share capital arises. The ONGC gets its capital from the Government. It also gets loans from the Government and they have been shown in the Annual Report and accounts (Ex. M-3) under two different heads: Capitals and loans. Before the ONGC Act, 1959, the ONGC was working as a Government Department. It was constituted as a Corporation under the ONGC Act, 1959. Under Section 16 of the ONGC Act, all non-recurring expenditure already incurred by the Central Government upto the date of establishment of the Commission and declared to be Capital Expenditure by that Government was to be treated as Capital Expenditure provided by the Government to the ONCC. Under Sub-section (2), the Central Government provided further capital to the ONGC. There are many Public Corporations which are asked to levy a cess. But there are others in which the Government provides on the capital. The ONGC is a Corporation in which it is the Government which provides the capital.

This capital is clearly a paid-up capital. It is distinguishable from sanctioned or promised capital. The balance-sheet M-16 shows that the capital on 14th October, 1959 was Rs. 5,57,76,395. Further capital of Rs. 2,85,00,000 was provided by the Government. Similarly, Exhibits M-17 to M-22 will show that further amounts of capital were provided by the Government with the result that the total capital now with the ONGC provided by the Government is Rs. 1,11,69,36,374. The details of this amount are given below:—

	Rs.
GOVERNMENT CAPITAL :	
Capital on 14-10-1959	5,57,76,395
Further Capital	2,85,00,000
(M—16)	8,42,76,395
Capital on 1-4-1960	8,42,76,395
Further Capital	14,25,00,000
(M—17)	22,67,76,395
Capital on 1-4-1961	22,67,76,395
Further Capital	13,00,00,000
(M—18)	35,67,76,395
Balance at the beginning of the year	35,67,76,395
Further Capital	21,94,00,000
(M—19)	57,61,76,395
Balance at the beginning of the year	57,61,76,395
Further Capital	28,86,00,000
(M—20)	86,47,76,305
Balance at the beginning of the year	86,47,76,395
Further Capital	33,36,84,979
(M—21)	1,19,84,61,374
Balance at the beginning of the year	1,19,84,41,374
Further Capital	11,00,00,000
(M—22)	1,30,84,61,374
Less reduction on transfer of Gujarat Refinery Project	19,15,25,000
BALANCE	1,11,69,36,374

The workmen contend that the Government has not so far fixed up or decided about the terms and conditions for the advances from the Central Government and that in the absence of any fixed terms and conditions the capital should not be treated as paid-up capital for the purposes of the Payment of Bonus Act. They also referred to the suggestion of the Bonus Commission regarding the method and calculation of paid-up capital as Fixed assets plus current assets less current liabilities.

The Central Government has made advances to the ONGC separately both of capitals and loans. What has been advanced as Capital has been treated by the ONGC as Capital and what was advanced as loan has been treated as loan. The mere fact that no ratio between Loan and Capital has so far been finalised, does not mean that what is capital should be treated as loan and what is loan should be treated as a capital. There is no ambignity about the terms and conditions in the advances from the Central Government. The ONGC does not want to treat the capital on par with share capital, because it is not a share capital. It only treats it as paid-up capital, the advances having been received from the Government in full. There is also no question of any recommendation of the Bonus Commission when the bonus is to be calculated in accordance with the provisions of the Payment of Bonus Act, and when the structure of the capital of the ONGC is completely different. All that was in the contemplation of the Bonus Commission has not been made a part of the Payment of Bonus Act. Under Section 6 of the Payment of Bonus Act, read with item 3 of Third Schedule, the ONGC which is a Corporation, is entitled to deduct, as prior charge, a sum calculated at 8.5 per cent of the sum of Rs. 111,69,36,374/-.

I find these Issues accordingly for the management.
Issue 13: *Transportation and Freight.*

Whether the expenditure under the head Transportation and Freight charged to profit and loss account which also include depreciation, is allowable as an expenditur under the payment of Bonus Act? If so, what should be the amount allowable in this respect, and what should be the principles for such deductions?

The sum deducted in the Profit and Loss Account by the ONGC under the head "Transportation and Freight" for the year in dispute is Rs. 3,37,89,781/-. It is made up of the sum of Rs. 2,85,60,650/- in respect of Railway Freight paid on the crude transported to Bombay and sold and Rs. 11,15,587/- on operational and maintenance costs on the crude and gas pipelines and Rs. 41,13,544/- as depreciation on the transportation equipment including pipelines. In the course of arguments the Learned Counsel for the ONGC kept the sum of Rs. 41,13,544/- in respect of depreciation on the transportation equipment to be dealt with under depreciation and Rs. 2,96,76,237/- under the head Transporation and Freight. In their Written Statement also, the ONGC stated that under the head "Transportation and Freight" charged to the Profit and Loss Account, the amount allowable would be Rs. 2,96,76,237/-.

On behalf of the workmen, it was contended that in view of the Award dated 10th June, 1971, the sum of Rs 11,15,587/- should be reduced by half because the Arbitrator held that maintainance cost inside the IOC's premises should be shared half and half between the ONGC and the IOC.

On behalf of the ONGC it was contended that this transportation and freight charges included the maintenance of pipelines only upto the IOC's premises and not inside the IOC's premises. It is not possible to agree with this contention of the learned counsel for the ONGC because there is nothing to show that the transportation costs include maintenance of pipelines only upto the IOC's premises and not within the IOC's premises. There is, however, force in the other contention of the learned counsel for the ONGC that the Award of 1971 cannot be taken into consideration for the year 1966-67. Operation and maintenance costs of the crude and gas pipelines were then entered as Rs. 11,15,587/- and in fact what the IOC had done later on, was to deduct the whole of the maintenance costs inside the IOC premises from the bills submitted by the ONGC. I would, therefore, agree with the learned counsel for the ONGC that although the sum of Rs. 41,13,544 in respect of depreciation could not be allowed as an expenditure under the head "Transportation and Freight", the entire amount of Rs. 2,96,76,237/- in respect of railway freight paid on the crude transported to Bombay and the operational and maintenance costs of the crude and gas pipelines, is allowable as an expenditure and has been rightly deducted from the profits by the ONGC.

I find this Issue accordingly.

Issue 7:

Whether the amount of Rs. 88,88,020/- charged is the profit and loss account as provision for doubtful Debts should be added back to the Profit in the computation of Gross Profits under the Payment of Bonus Act, 1965?

The learned counsel for the ONGC contended that since the sum of Rs. 88,88,020/- owned by the Koyali and Bombay Refineries was not recoverable in the year ending 31st March, 1967 as the IOC and the Burma Shell and the Esso Inc. had not honoured the claims of the Commission and these debts had not become bad debts, a provision for these debts as doubtful debts was rightly made in the Profit and Loss Account. Relying on the Metal Box Company of Indias' case 1969(1) LLJ-785, the learned counsel for the ONGC contended that the provision is against anticipated expenditure and should be treated as a reserve. The contention is that only when the amounts become doubtful in a particular year, a provision is to be made in that year and is to be deducted from the revenues of a particular year. A similar contention was raised by Shri G. B. Pai before the Supreme Court in Civil Appeals Numbers 415, 813 and 1302 of 1967; between Indian Oxygen Limited and their workmen, decided by the Supreme Court by its judgment dated 9th December, 1971. This contention was repelled by the Supreme Court. Shri Vaidyalingam, J speaking for the Supreme Court observed:

"The Tribunal was justified in holding that the appellant was not in order in deducting Rs.55, 127/-under the head "doubtful debts" as an item of expenditure. It was perfectly justified in adding back this amount in computing the gross- profits".

The sum of Rs. 88,88,020/- has, therefore, to be added back to the net profits for the computation of gross-profits under the payment of Bonus Act, 1965.

I find this Issue for the workmen.

Issue 8:

Whether the amount of Rs. 59,47,077/- included in the sale proceeds of the year pending arbitration but shown as a part of the note in the Profit and Loss Account or the net amount of Rs. 24,25,532 finally determined as payable by the Award should be added to the income of the year?

The ONGC supplied gas from Cambay and Ankleswar to the Gujarat Electricity Board and valued the supplies at the rate of Rs. 80 and 100 per thousand cubic metres respectively. But in view of a dispute pending with the Arbitrator, the ONGC made a provision to the extent of Rs. 40 and 60 per thousand Cubic metres respectively under the head "Provision against credit taken to the sale proceeds pending arbitration" and the cost of sale proceeds were credited in the Profit and Loss Account at Rs. 40 per thousand cubic metres only, leaving out Rs. 59,47,077/- as a provision against the credit taken to sale proceeds pending arbitration account. The contention on behalf of

the workmen is that this sum, being the sale proceeds as per books of accounts of the Commission, should be taken into account as income of the year and should be added back to profits. As mentioned already, Shri Vaidyanathan has stated that the ONGC follows the Merchantil system of accounting. The same principle which was applicable to doubtful debts under Issue No. 7 would, therefore, apply to this also. In view of Merchantile system of accounting, the entire amount of the sale proceeds at Rs. 80 and Rs. 100 per thousand cubic metres of the supplies of gas from Cambay and Ankleswar respectively, should have been added to the credit side and this sum of Rs. 59,47,077 should not have deducted therefrom because of the pendency of arbitration proceedings. This sum was in a no better position than the doubtful debts. The Arbitrator did not allow the ONGC the entire sum of Rs. 59,47,077 but allowed a sum of Rs. 24,25,532. I agree with the learned counsel for the workmen that it would not be correct to add Rs. 24,25,532 only, for the Award was made long after the close of the year 1966-67, and we have to see the position as it stood on the date in the year itself in view of the Merchantile system of accounting followed by the ONGC. In that year the sale was for the entire amount calculated at the rate of Rs. 80 and Rs. 100 for gas supplied from Cambay and Ankleshwar respectively and no deduction of Rs. 59,47,077 should be made. In Keshav Mills Limited *Vs.* Commissioner of Income-tax 23 I.T.R.—231 (S.C.), Mahajan Das and Bhagwati, JJ for the Supreme Court held that:

> "The Merchantile system of accounting treats profits or gains as arising or accruing at the date of the transaction notwithstanding the fact that they are not received or deemed to be received."

The decision of the Supreme Court in Indian Oxygen Limited *Vs.* Their Workmen (supra) regarding doubtful debts is also fully applicable on principles and the sum of Rs. 59,47,077 will have to be added back to the net profits in order to arrive at a correct figure.

I find this Issue for the workmen.

Issue 4:

> Whether the interest at Rs. 1,01,49,188 on loans from the Government of India charged in the Profit and Loss Account is allowable for the computation of Gross Profits under the Payment of Bonus Act, 1965?

The Payment of Bonus Act does not specifically mention interest on loans. The management has charged Rs. 1,01,49,188 in the Profit and Loss Account. It is wholly on account of the finances which have been used in the business of the Commission. We have only to see if the net pofits have been correctly arrived at. If this amount of interest on loans is not deductible from the profits, it will have to be added back to net profits. The contention of the learned counsel for the ONGC is that this is deductible to arrive at the net profits. The ONGC has not borrowed any amount from any third party. It has borrowed monies from the Government only. The interest payable to Government was 5½ per cent upto 1965 and 6¼ per cent on the loans advanced after that vide page 33 of Exhibit M-3. The ONGC has also given as loans to the Hydrocarbons India Private Limited monies amounting to Rs. 7,17,96,716 in 1965-66 and in 1966-67 they totalled to Rs. 10,42,95,926. The ONGC holds all the shares in the Hydrocarbons India Private Limited and it is a Subsidiary Company under law. Exhibit M-2, Annual Accounts for the year 1965-66 shows that the amount realised from Hydrocarbons India Private Limited is Rs. 35,26,814 and the interest paid to Government was Rs. 78,16,905. Exhibit M-3 for 1966-67 at page 38 shows that the amount paid to Government by way of interest on loans from Government is Rs. 1,77,11,522 and the amount received from Hydrocarbons India Private Limited was Rs. 92,16,914. The balance deducted in the Profit and Loss Account is, therefore, Rs. 84,94,608. Thus, the interest received from the Hydrocarbons India Private Limited have been adjusted against the interest paid to the Government and only the balance is given in the Profit and Loss Account of the ONGC. Exhibit M-32 shows that interest to the extent of Rs. 16,54,580 were due to the Government of India on account of imports arranged directly from the loans/credit of the Government of India in terms of letters No. F. 32(1)ECA(A)/66(2) of the Ministry of Finance, Department of Economic Affairs dated 21st/24th August, 1966. The adjustment made in the Books of Accounts relates to the import from Russia. The interest is, as per above letter of the Government, for the period between the date of payment to the foreign supplier and the date of paying the rupees equivalent on a total value of the imports of Rs. 4.43 crores. Adding this sum of Rs. 16,54,580 to the balance of Rs. 84,94,608 we get the total of Rs. 1,01,49,188. This the ONGC has paid to the Government and charged to Profit and Loss Account.

The workmen's contention is that the balance sheet shows that the total loans from the Government of India were Rs. 21,64,68,254 and the total loans and advances affected by the Commission are of the order of Rs. 14,59,75,260 which includes the non-interest bearing advances also. The workmen further contend that if the loans were utilised for capital expenditure, the interest to that extent had to be charged to capital account and not to revenue account that the Tribunal will have to work out the equities between the parties for correct assessment of correct amount of interest if at all considered reliable that the rate of interest has not been decided by the Government and the Tribunal will have to consider it on evidence and that the claim in the absence of these details is not allowable and should be added back.

The ONGC points out in its Rejoinder, that the amounts of loans from the Government quoted at Rs. 21.65 crores is not correct as this is the loan from the Government of India at the beginning of the year 1966-67 and the balance sheet gives clear details of loans and advances, both interest bearing and non-interest bearing. Out of the total loans and advances given by the ONGC only Rs. 4,08,33,577 is a non-interest bearing advance to staff. The figures of interest on loan are clearly stated in the Profit and Loss Account of the Commission. According to the management, there is no question of working out equities between the parties as contended by the workmen. The ONGC further contends that in accordance with the general commercial practice, the interest payable by any organisation is to be charged against revenues for the particular year. The suggestion on that interest to the extent that loans have been converted into capital expenditure cannot be debited to the Profit and Loss Account is vehemently denied. According to the ONGC, it is wholly besides the point in what way the loans are utilised. Nor is it a prudent financial practice to capitalise interest year after year. This is also not done in actual practice. The ONGC reiterates that the interest is a correct charge in the Profit and Loss Account for calculation of bonus. As for the interest received from the Hydrocarbons India Private Ltd., the ONGC is deducting that interest out of the total interest on loans and advances by the Government of India.

Shri Vaidyanathan stated that the Commission had to borrow monies from the Government and the Government had advanced loans. As shown in the balance sheet, the amount is Rs. 29,30 crores approximately. He also stated that the ONGC did not borrow from any party other than the Government. As for the interest, it was payable to Government upto May, 1966 at 5½ per cent and thereafter at 6¼ per cent. Regarding the Hydrocarbons India Private Ltd., MW-2 stated that it is a 100 per cent subsidiary of the Commission, and the amounts advanced to it as on 31st March, 1967 was 10.43 crores approximately. The actual amount is mentioned at page 33 of the balance-sheet Exhibit M-3. He further stated that interest paid by the Hydrocarbons India Private Limited was Rs. 92,16,000 shown in the Profit and Loss Account at page 38 of Exhibit M-3. There was also a non-interest

bearing loan to the staff as shown at page 33 of Exhibit M-3. He stated also that the amount of interest payable by the Commission was shown in the Profit and Loss Account at page 38 of Exhibit M-3 and that the amounts are Rs. 1.77 crores and 16.54 lakhs and odd. He was not shaken in the cross-examination and I do not see any reason to disbelieve his sworn testimony on the point.

Exhibit M-3 at pages 30, 38 and 39 shows that the capital was Rs. 118 crores approximately. Loans were Rs. 29 cores and sale proceeds were Rs. 28 crores. All these three items together amount to Rs. 175 crores (approximately) to the Fund of the ONGC. As mentioned, Section 19 of the ONGC Act specifically provides that the ONGC shall have its own Fund and all receipts of the Commission whether from grants made by the Central Government or otherwise shall be carried thereto and all payments by the Commission made therefrom. It further says that the Commission may expend such sums as it thinks fit for performing its functions under the Act and such sums shall be treated as expenditure payable out of the Fund. How can it then be said that any particular expenditure was incurred out of capital only or loan only or sale proceeds only? The expenses are incurred by the ONGC out of the Fund consisting of capital, loans and sale proceeds as provided by Section 19 of the Act. It is not, therefore, possible to say which part of the loan goes in capital expenditure or revenue expenditure. Whatever the nature of the expenditure may be, the interest on loan has to be charged to Profit and Loss Account.

It was contended on behalf of the workmen that the ONGC had failed to establish what part of loan was spent on revenue expenditure and that the entire amount of interest should consequently be added back as capital expendiutre under item 3(d) of Schedule II of the Payment of Bonus Act. For this he relied on Commissioner of Income-Tax (Central), Calcutta *Vs.* Standard Vacuum Refining Co. of India Ltd. in 1961 Income Tax Report 799, Calcutta. The contention is without force. The case of 1961 ITR-799 was a case of payment of interest on debentures. The decision is wholly inapplicable to this case. On this finding it was taken as capital. The position here is entirely different. Since the loan was taken from the Government only as a loan and not necessarily for a capital expenditure *vide* Exhibit M-35 containing the sanction for loan dated 13th May, 1966, the ONGC is not bound to treat interest on the loan as a capital expendfture.

In Hinds *Vs.* Buenos Ayers Grand National Tramways Co. Ltd. (1906) 2 ch. 654,660 mentioned by their loardships of Calcutta Hiugh Court in Commissioner of Income Tax's case (supra) Washington in his judgment obsered:

> "Now, it seems to me the company are entitled—I do not say that they are bound to do it—if they think gt to charge in their accounts as the cost of that mile of line not only the 10,000£ but the 10,000£ and the interest on it during the period of construction". (The under lining is mine)

It is, thus, clear that the company was not compelled to charge it to the capital account and could charge it to the revenue account also.

For all these reasons, I would agree with the learned counsel for the ONGC that the ONGC could, as they did, deduct amount of Rs. 1,01,49,188/- in the Profit and Loss Account and that it is not to be added back to the profits for the computation of gross profits.

I find this Issue for the management.

Issue No. 1—

What should be the amount, if any, of depreciation deductible under section 6(a) of the Payment of Bonus Act, 1965 as prior charge for the purpose of computation of available surplus?

Section 10 of the Payment of Bonus Act provides for the payment of minimum bonus. It runs as follows:—

> "11. (1) Where in respect of any accounting year the allocable surplus exceeds the amount of minimum bonus payable to the employees under Section 10, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in the accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum of twenty per cent of such salary or wage.
>
> (2) In computing the allocable surplus under this section, the amount set on or the amount set off under the provisions of section 15 shall be taken into account in accordance with the provisions of that section."

Under this section, we have to find out the allocable surplus. It is defined in Sec. 2(4) of the Act. We are not concerned with Cl. (a) of sub-sec. (4) of Sec. 2. The only clause applicable is cl. (b). The allocable surplus will, therefore, mean 60 per cent of the available surplus in an accounting year and includes any amount treated as such under sub-sec. (2) of Sec. 34. Available surplus' has been defined in sub-sec. (6) of Sec. 2 of the Act as the 'available surplus' computed under Sec. 5 of the Act which runs as follows:

> "5. The avaible surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6.
>
> .....

The proviso is inapplicable to the present case. We have thus to find out the gross profits for the year in question and then deduct therefrom the sums referred to in section 6 to arrive at the available surplus. Section 4 deals with the computation of gross profits. Since the ONGC is not a Banking Company, we are concerned with only section 4(b) of the Act. Under this sub-section, the gross profits have to be calculated in the manner specified in the Second Schedule. The scheme of this Schedule consists of seven items. The first item mentions the net profits as per Profit and Loss Account. The second item provides for adding bavk of certain provisions to the net profits. Items 3 and 4 provide for further additions. Item 5 is the total of item nos. 1 to 4. Then there are certain deductions to be made under item 6. Item 7 provides for gross profits for the purpose of bonus after deducting the total of item no. 6 from item no. 5.

From the gross profits thus found, deductions have to be made as provided for in section 6 of the Act. Clause (a) of section 6 deals with deductions of depreciation sub-section (b) with that on development rebate or development allowance sub-section (c) with that of direct taxes which the employer is liable to pay for the accounting year and Cl. (d) with further sums as specified in respect of the employer in the Third Schedule. Deprcciation finds place in the Second Schedule for the computation of gross profits and also in section 6 for deductions. The question under this Issue relates to deductions under section 6(a) of the Act. But it would be material also to consider in this connection the depreciation under item (2) of Schedule II which has to be added back to the net profits.

The ONGC alleges that in its Books of Accounts it has debited a sum of Rs. 200.22 lakhs by way of depriciation under the various heads of the Profit and Loss Account and that this sum would be added back under item 2(b) of Schedule II of the Act. It further alleges that under Sec. 6(a) of the Payment of Bonus Act it is entitled to deduct from the gross profits as prior charges any amount by way of depreciation in accordance with the provisions of sub-section (1) of Section 32 of the Income-Tax Act, and that the amount so deductible is Rs. 3,76,84 lakhs.

The workmen also rely on Section 6(a) of the Payment of Bonus Act and say that the details in respect of the amount of depreciation claimed by the ONGC in the Profit and Loss Account under the various items as well as details of items claimed under Income Tax Act are essential for the calculation of allowable depreciation and that it is also necessary to examine the Income Return and the Assessment Order for the relevant year. It is further pleaded that the depreciation is a charge under various heads either through allocation or apportionment and that the sum has also been merged with other expenses and has thus lost its identity and that the figures added back are, therefore, purely national and not capable of verification. In respect of depreciation charged to Profit and Loss Account as a part of amortisation of development expenditure in areas other than producing properties, the workmen plead that it is not allowable for the purpose of bonus as the whole of the expenditure is of a capital nature. It is also pleaded that the depreciation allowable under the Income-Tax Act on plant, machinery, buildings and furniture to the extent provided thereby should be allowed and that the entire depreciation by which fixed block has been reduced be added back to net profits.

To find out how the item of depreciation of Rs. 200,32,006, which the ONGC seeks to add back, has been arrived at by the ONGC we have to look for it under various heads in Exhibit M-3. Out of a sum of Rs. 4,37,00,000, in respect of Transport and Freight, Rs. 41,13,584 is depreciation suffered by transporation equipment. MW-2, Shri Vaidyanathan states that the figure for transportation and freight includes depreciation in respect of pipelines through which oil or gas flows and other transportation equipment. In Exhibit M-28 proved by Shri Vaidyanathan, Rs. 41,13,554 has been shown as depreciation in Transportation and Freight.

There is another depreciation item of Rs. 25,00,743 shown at page 38 of Exhibit M-3. It is not mentioned in Exhibit M-3 that it was on pipelines. But Shri Vaidyanathan says that depreciation relates to the pipelines which th eONGC had given on lease to the Oil Corporation and there has been no cross-examination worth the name on this point. It is also shown as depreciation in Exhibit M-28. There is another item of depreciation of Rs. 76,81,740. It is on amortisation of development expenditure. This is also given in Exhibit M-28. Then there is depreciation shown in Production Expenditure on page 38 of Exhibit M-3. Productiion Expenditure is shown as Rs. 4.52,66,499. Exhibit M-28 shows Rs. 57,26,970 as depreciation under the four heads, thus:—

"I. *Included in production expenditure*:

(1) As depreciation	Rs. 37,63,811
(2) In depletion of producing property	Rs. 15,77,247
(3) In transport allocation	Rs. 3,24,532
(4) In administration allocation	Rs. 60,380
	Rs. 57,25,970

If we add this total of Rs. 57,25,970 to other three items of depreciation already mentioned, the total comes to Rs. 2,00,22,006. MW-2 (Shri Vaidyanathan) deposes on the expenditure on development and exploration in areas other than producing properties. The expenditure comes to Rs. 5.42 crores. Out of this, according to him, Rs. 76,82,000 roughly is the amount of depreciation. It is the same as Rs. 76,81,740. This figure was mentioned in the ONGC's Written Statement. Annexure IV to that Statement marked Exhibit M-8, even then gave the figures of Rs. 2,00,22,006 in respect of depreciation. At the instance of the workmen, a break-up was directed to be given and this has been given of the various items. But no further written Statement was filed by the workmen. Nor is anything mentioned and even the rejoinder is of a date earlier than the break-up.

The contention of the workmen, on the other hand, is that there are four different figures of depreciation given by the management. One is the figure of Rs. 25,00,743 given on page 38 of Exhibit M-3 as depreciation. The other figure of depreciation is that of Rs. 3,86,10,524 on page 37 of Exhibit M-3. This is the amount of depreciation mentioned as written off during the year 1966-67. The third figure is that of Exhibit M-28 i.e. Rs. 2,00,22,006. The fourth figure of Rs. 3,76,84,373 given in Exhibit M-8 is the grand total of depreciation. The fifth figure is of Rs. 6,24,04,179 given in the revised return in Annexure to Exhibit M-12. The contention is that these various figures have been placed before the Tribunal and the management wants us to accept the last figure of Rs. 6,24,04,179 for deduction of depreciation under Section 6(a) of the Payment of Bonus Act. They have not been able to reconcile the various figures and to establish their claim for deduction of this amount of Rs. 6,24,04,179. According to the workmen, oral evidence of Shri M. N. Tiwary is worthless and that documentary evidence from the balance-sheet contradicts Shri Tiwary. It is strongly urged that by showing greator rise of depreciation by Rs. 1.66 there is loss to the workmen since the depreciation goes up for deduction. At the same time, the machinery purchased in that year gets development rebate and the price of plant and machinery is debited to the profit and loss account under the heading consumption of stores and production. Thus, the net profits go down. This, according to the workmen, is a manipulation to get advantage under all the heads. It is pointed out by the learned counsel for the workmen that in the original return the assets which were shown to have been used for less than 180 days are now sought to be shown as in use for more than 180 days. By this process, the depreciation has shot up enormously and the difference has not yet at all been explained as to how this difference in the date of purchase arises and how the period of use goes up. Similarly, the user of less than 30 days has been increased to more than 30 days resulting in increase in the amount of depreciation. Again there are additions to fixed assets shown by the management without any evidence or explanation. Lastly there is re-classification of assets not explained in evidence. Assets formerly shown as revenue expenditure have now been shown as fixed assets. All this is the criticism against the management demands of Rs. 6,24,04,179 as depreciation under Section 6(a) of the Payment of Bonus Act. It has been further pointed by Shri Bhandare, learned counsel for the workmen, that according to Shri M. N. Tiwary, MW-1, himself, the original income-tax return was filed on 1th February 1968 and the revised return was filed on 27th May, 1971, more than three years afterwards. The explanation given by Shri Tiwary in his evidence for the variations is that the full information was not available with the management on the date of the original return because the branches are spread all over the country. As against this, the workmen point out that the original return was filed 10½ months after the close of the financial year and there was, thus, ample time to get all the information required and that an audited balance-sheet cannot be expected to go so wrong. The Income-tax Officer has been criticised by the workmen for accepting what was done by Shri M. N. Tiwary. The criticism of the workmen further is that the management should have either shown the items of assets as capital expenditure and then claimed depreciation or shown them in revenue expenditure and not claimed depreciation. The management could not, according to the workmen, do both and reduce the profits by showing them first as a revenue expenditure and then claiming depreciation and thus be unfair to the workmen. Shri M. N. Tiwary was cross-examined or this point. It is further pointed out on behalf of the workmen that although Shri Tiwary need not have brought each and every letter alleged to have been received from the projects in reply to his letters and circulars issued to them after he joined the ONGC, he could have brought some letters as instances According to the workmen such a claim cannot be allowed merely because Shri M. N. Tiwary says that he had seen them and it was incum-

bent on ONGC to prove the huge alteration in the depreciation figures.

So far as the addition of the amount of Rs. 2,00,22,006 by way of depreciation to the net profits under item 2 of Schedule II of the Payment of Bonus Act is concerned, we find that, as amply proved by the account books and the oral evidence of Shri Vaidyanathan, this was the amount of depreciation shown in the accounts and deducted in the Profit and Loss Account for arriving at the net profits. In Metal Box Company of India *Vs.* their workmen: 1969(1)LLJ-786, the Supreme Court held that Schedule II of the Payment of Bonus Act "requires adding back to the net profit shown in the pront and loss account the amount of depreciation *deducted in that account* while computing gross profits". (The underlining is mine). It is thus obvious that under Schedule II the amount to be added as depreciation is the same amount which has been shown in the profit and loss account and deducted in that year for arriving at the net profits. The ONGC was, therefore, right in adding back Rs. 2,00,22,006 by way of depreciation to the net profits under Schedule II because that was the amount shown in its account books.

In the Metal Box Company of India (supra), Shelat, J, speaking for the Supreme Court, want on to say "Obviously the depreciation so to be added back is the one worked out by the Company under Section 206(2) of the Companies Act. Section 6 of the Bonus Act provides that having arrived at the gross profits under Section 4 read with Schedule II, the company is entitled to deduct therefrom depreciation admissible under Section 32(1) of the Income-tax Act *i.e.* such percentage on the written down value as may be, in the case of each of the classes of assets, be prescribed." A distinction is thus made between the adding back of depreciation in accordance with Schedule II and the deduction of depreciation under Section 6 of the Payment of the Bonus Act. After having arrived at the gross profits under Section 4 read with Schedule II, the deduction of depreciation has to be made on a calculation on the basis of Section 32(1) of the Income-tax Act. It is not, therefore, surprising if there is a difference between the amount mentioned as depreciation in the books of account which is to be added back to arrive at the gross profits and the amount which is to be deducted under Section 6 of the Bonus Act after gross profits have been arrived at under Section 4 read with Schedule II. In the Metal Box Company of India case also, there were differences between the three figures for depreciation before the Tribunal, *i.e.* Rs. 23 lakhs and odd shown in the Profit and Loss Account, Rs. 28.64 lakhs shown in the computation and Rs. 28.64 lakhs shown in the computation and Rs. 28.82 lakhs subsequently claimed by the Company as the reivsed figure of depreciation. In that case the Supreme Court did not hold that in view of the earlier figure of Rs. 23 lakhs, the management could not claim deduction of depreciation to the extent of Rs. 28.82 lakhs. All that they held was that the amount sought to be claimed for deduction had to be established by evidence, and remanded the case to the Tribunal for ascertaining the amount afresh after giving the parties opportunity to lead such evidence as they desired. In the present case full opportunity was given to the parties to lead evidence. The management put into the witness box Shri M. N. Tiwary, who had prepared the revised Income Tax return and who had issued letters and received replies to them from the various projects on various points and examined those letters received before preparing the Income Tax return. The criticism that he did not produce at least some of the letters on which he based his inferences, is without substance.

Section 65(g) of the Evidence Act runs as follows:—

"66. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

.....

.....

(g) When the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole collection.

.....

.....

In case (g), evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents."

Shri M. N. Tiwary is an Assistant Commissioner of Income Tax on deputation to the ONGC. He is, therefore, a person skilled in the examination of documents on the question of assessment of depreciation and income-tax for the purpose of income-tax. In fact he himself examined the mass of documents received by him on the question which cannot be conveniently produced in Court. The fact to be proved is the general result of the whole collection. His evidence, therefore, on the point is admissible. He has produced also the return prepared by him and every item has been given in detail. He was examined and cross-examined in detail by the parties

The reasons for the difference in the amounts of depreciation are clear. Pages 37 and 38 of Exhibit M-3 are in accordance with the instructions of the Government of India. The Income-tax Act takes the written down value of an asset. For filing the return in September 1968, Shri Tiwary's predecessor-in-office did not have the benefit of all the material available to Shri Tiwary. The written down values in the return for the year 1965-66 were calculated by the I.T.O. and the Assessment Order of the I.T.O was received after the original return for 1966-67 had been filed. The written down value in the revised return has been rightly taken in accrodance with the assessment order for the accounting year 1965-66. The Income-Tax Officer would naturally not have accepted the written down value other than what his own assessment order for the earlier year (which was not appealed against) said. There is the presumption that the I.T.O. who considered the revised return, would do his duty and that depreciation was according to law. It is true that Shri Tiwary was an Assistant Income-tax Commissioner on deputation with the ONGC. But it raises no presumption that the I.T.O., would neglect his duties because of it. His decision will affect the assessment in the next year and the years to come and the I.T.O. will not deprive the Government of the Income-tax due for all subsequent years.

Shri Tembe for the All India ONGC Employees Union (AIPPW) contends that the accounts filed by the ONGC are worthless, that the audit report is not to be accepted because the certificate is not in the proper form as required by the Companies act, that there was no physical verification of fixed assets and that even the block registers were not available in 1960-61 and in the year in dispute. It is further contended that consumption of stores is incorrect rendering the closing balance of stores as incorrect and that the depreciation is defective.

According to the audit report on page 40 of Exhibit M-3, the shortages on stock verification, points out Shri Tembe, increased from Rs. 87.80 lakhs to Rs. 123.69 lakhs and there was also an irregularity of Rs. 5.98 lakhs in respect of goods and supplies. Shri Tembe contends that the Management has failed to show statutory depreciation in view of the audit report and so the depreciation as a prior charge for the purpose of bonus would be nil. He further contends that in view of Section 32(1) of the Income-tax Act and Rule 5 of the Income-tax Rules, depreciation can only be according to the period the machinery has been in actual use. For this purpose, physical verification of assets, plant and machinery, block registers are according to him, necessary. Shri Tembe also refers to page 42 of the audit report in Exhibit M-3 and contends that Rs. 9 crores worth of shortages and Rs. 8½ crores worth of excesses have not yet been re-conciled and adjusted. On page 43, para 'G' of Exhibit M-3, the audit report says that as no linking of credits in respect of the provisional liability for imported stores was done

with reference to the individual invoices paid, the accuracy of the adjustments made by the projects could not be checked by audit. In para 'H' of the same page, there are cases of mis-classification pointed out in the audit report and because of this the amount of depreciation to be added back will be affected. Shri Tembe also refers to Exhibit M-4, page 29 and contends that there is a difference of Rs. 7 crores in the value of gross block, meaning total fixed assets as shown on 1st April, 1967 and as shown in the accounts for 1966-67 and that the workmen cannot agree to the depreciation on these Rs. 7 crores because the nature of the assets in respect of which there is a mistake is not known and the number of days for which they were used is also not known.

So far as the Companies Act is concerned, it does not prescribe any particular form of certificate. Even if it did, we are to be guided by the ONGC Act and the Rules and not by the provisions of the Companies Act

The ONGC Rule 18(3) gives the form of the Certificate, as follows:

"18

.....

.....

(3) The audit officer shall audit and report on the annual accounts of the Commission by the end of February of the following year. He shall also certify whether in his opinion the balance sheet and profit and loss account contain all particulars and are properly drawn up so as to exhibit a true and fair state of affairs of the Commission and in case he has called for any information from the Commission or any of its officers, whether it has been given and whether it is satisfactory."

The Certificate given by Shri N. K. Bhattacharya, Director of Commercial Audit, who was auditing the accounts on behalf of the Comptroller and Audit General of India, is exactly in the same form. It is true that it mentions "subject to observations in the separate audit report", but that had to be done in view of these observations of the audit report. It is true that certain defects were noticed in the audit report as pointed out by Shri Tembe. But there is hardly any audit report which does not mention some defects in the accounts audited. It is for the auditor to say whether the defects are of such a nature as would require withholding of the certificate. Shri Bhattacharya evidently found that the defects observed by him in the audit report were such as could not stand in the way of his giving a certificate in accordance with Rule 18(3) of the ONGC Rules. It was enough to mention that he had made certain observations in the separate audit report for rectification of errors and mistakes.

As for the criticism that Block Registers were not kept, remarks on page 45 of Exhibit M-3 show that the Commission proposed to adopt the results of the last census during the current financial year 1967-68 and that immediately thereafter the writing of Block Registers would be taken up. This was natural since, as pointed on page 41 of Exhibit M-3, the results of the first census conducted in April, 1964 were scrapped by the Commission in January 1967 owing to various defects in the classification of capital items and non-completion or delayed completion of census for some projects. The second census was conducted in March 1967. The results of this census were approved by the Commission in September, 1967. In view of the extensive projects of the ONGC it could not start writing of the Block Registers in accordance with new census till December 1967. They are now being kept.

So far as the objection regarding the verification of fixed assets is concerned, the ONGC Rules 16 and 17 will show that what is necessary is to maintain a register of fixed assets/plants showing brief particulars of assets/plants, original cost, subsequent additions and depreciation in such form as may be specified by Government in consultation with the Comptroller and Auditor-General of India, regarding verification, they mention that all stores belonging to the Commission shall be verified every year, or at such short intervals as the Commission might think fit, by employers of the Commission othre than those belonging to the Stores Organisation and a report containing the results of such verification, including shortages or excesses has to be forwarded to the Audit Officer. Thus, it provides for verification of stores only and not of fixed assets. It would not, therefore, be correct to discard for this reason the Annual Report and Accounts for 1966-67 (Exhibit M-3) as worthless as contended by Shri Tembe on behalf of the workmen.

As for the deduction of depreciation under Section 6(a) of the Payment of Bonus Act, we have already seen that it has to be calculated in accordance with the provisions of sub-section (1) of Section 32 of the Income-tax Act. The rates are given in Rule 5 of Income-tax Rules ranging from 100 per cent to Nil per cent depending upon the period of use. In this connection, sub-sections 1(iv) and 1(iii) are also material. Exhibit M-5 shows that on 15th February, 1968 the Commision filed a return of the income for 1967-68. The assessment for the year 1965-66 was completed as late as March 1971 by the Income-tax Officer. After this assessment for 1965-66 had been received, a revised return was filed for 1966-67 on 22nd June, 1971. It is true that depreciation in the original return is different from that in the revised return. But Shri Tiwary has given the explanation that since as already mentioned, the entire information was not before the Commission, he obtained the information and completed the return. A copy of the revised return is Exhibit M-24. The original return was also produced before the Court. The statements enclosed with the return are Exhibits N-10 to N-15. Exhibit M-12 shows that the total depreciation amount is Rs. 6,24,04,179/-. It is in respect of buildings, including additional depreciation under Section 32(1)(iv), storage tanks, railway siding, pipelines, furniture and fixtures, tents and accessories, tools and equipment, plant and machinery transport vehicles and the balancing depreciation admissible under Section 32(1)(iii). All these details are given in the charts which are part of the Exhibit M-12. They are Appendix I to the Award.

Shri Tiwary gives detailed reasons for the difference between the figure shown in column 9 of page 37 of Exhibit M-3 and the depreciation claimed in the revised Income-tax Return they are as followis:

(i) There are some other items on which depreciation is admissible under the Income Tax rules but which were not included on pages 36-37 of Exhibit M-3;

(ii) In some cases, rates taken on these pages are lower than those prescribed under the Income-tax Rules;

(iii) Under the Income-tax Rules, certain additional depreciation are also admissible which, by their very nature, cannot be shown in the accounts;

(iv) Information available at the time of compilation of accounts is not adequate for enabling compliation of depreciation figures as per Income-tax Rules;

(v) Particulars of break-up were obtained and then fitted in the statement of depreciation prepared for filing the Income-tax return.

As deposed by Shri Tiwary additional depreciation is also admissible on assets which are lost, sold or discarded under certain circumstances, and on particular kinds of buildings udner Section 32(1)(ii) of the Income-Tax Act. It is explained by Shri M. N. Tiwary that Registers do not always certain full particulars to determine value of the plants and machinery and that for that purpose it is often necessary to go through vouchers and even correspondence. Shri Tiwary looked into the registers, vouchers and correspondence for arriving at the figures of depreciation permissible under the Income Tax laws. There is nothing to show that what he has stated is incorrect or that any item

in the revised return is wrong. There is, thus, no reason to disbelieve Shri Tiwary and to discard the depreciation claimed in the revised return. The amount of depreciation deductible under Section 6(a) of the Bonus Act as prior charge for the purpose of computation of available surplus is, therefore. Rs. 6,24,04,179. It is well-settled that the depreciation only for the year in dispute will be taken into consideration and not for the previous years.

I find this Issue accordingly for the Management.

Issue 3:

What should be the amount, if any, of Development Rebate allowable as per Payment of Bonus Act, 1965 and its bearing on the Payment of Bonus for the year 1966-67.

The Management claims that Rs. 9,64,62,962 should be deducted as a prior charge in terms of Section 6(b) of the Payment of Bonus Act.

On behalf of the workmen it is contended that the development rebate shown in the profit and loss account is Rs. 4,68,94,444; that the development rebate is allowable strictly as per provisions of Section 33 of the Income-tax and that the Bonus is on the ONGC to give full particulars of the alleged development rebate and to show that the provisions of Section 34(3) of the Income-tax Act have been complied with. The workmen further contend that no claim for any prior period should be allowed to be included in the alleged claim of development rebate and that consequently the sum of Rs. 4.9 crores claimed as arrears of development rebate for the past years is not allowable.

The relevant provisions of Section 6(b) of the Payment of Bonus Act in respect of development rebate run as follows:

"6. The following sums shall be deducted from the gross profits as prior charges, namely:—

(a) .....

(b) any amount by way of development rebate or development allowance which the employer is entitled to deduct from his income under the Income-tax Act.

Section 33 of the Income Tax deals with Development Rebate. Section 33(1) gives the rates regarding development rebate. Section 23(2) reads as follows:—

"33

.....

(2) In the case of a ship acquired or machinery or plant installed after the 31st day of December, 1957, where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be, (the total income for this purpose being computed without making any allowance under sub-section (1) or sub-section 1A of this section or sub-section (1) of Section 33A or any deduction under Chapter VI-A or Section 280) is nil or is less than the full amount of the development rebate calculated at the rate applicable thereto under sub-section (1) of sub-section (1A), as the case may be:—

(i) the sum to be allowed by way of development rebate for that assessment year under sub-section (1) or sub-section (1A) shall be only such amount as is sufficient to reduce the said total income to nil: and

(ii) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year and the development rebate to be allowed for the following asssesment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to nil, and the balance of the development rebate, if any, still outstanding shall be carried forward to the following assessment year and so on, so however that no portion of the development rebate shall be carried forward for more then eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be.

....."

Under this sub-section the development rebate can be carried forward upto eight years. So, the learned counsel for the ONGC contends that the development for previous years also be deducted out of the gross profits even though depreciation on previous years cannot be so deducted. Shri Bhandare for the Mazdoor Sabha contends that the wordings of Section 6(a) and 6(b) are the same and that even development rebate for previous year cannot be deducted.

I find myself unable to agree with Shri Bhandare. There is a clear distinction between the provisions of Section 6(a) and 6(b) of the Payment of Bonus Act. Section 6(a) of the Payment of Bonus Act provides for depreciation admissible in accordance with sub-section (1) of Section 32 of the Income-tax Act. It, therefore, excludes the applicability of the provisions of sub-section (2) of Section 32 and it is sub-section (2) of Section 32 which provides for admissibility of depreciation for the previous years. Section 6(b) on the other hand, provides for deduction of development rebate/development allowance which the employer is entitled to deduct from his income under the Income-Tax Act. There is no limitation of any particular section or sub-section of the Income-Tax Act under Section 6(b) of the Payment of Bonus Act. So, the provisions of Section 33(2) of the Income-Tax Act will also be applicable. The result is that under Section 6(b) of the Payment of Bonus Act, development rebate for the previous years can also be deducted from the gross profits for arriving at the available surplus. The revised assessment order Exhibit M-39, and particularly, Annexure 'B' to that Order shows that development rebate for the current year is Rs. 4.75 crores. The figures for the cost of various items, in respect of which development rebate is claimed, are given in Annexure 'B' of Exhibit M-39, and development rebate is to be calculated at 35 per cent and it amounted to Rs. 4,96,90,485. But, out of that amount, the management had surrendered development rebate to the extent of Rs. 21,09,285 in view of the fact that it had discovered mistakes in respect of development rebate already allowed. After deducting this sum of Rs. 21,09,285 the development rebate amounted to Rs. 4,75,81,200. The development rebate for the previous years in acordance with Exhibit M-23 (Assessment Order for the Accounting Year 1965-66) was Rs. 5,19,57,412 and Rs. 2,66,21,816 was for the accounting year 1965-66. Therefore, the total development rebate would amount to about Rs. 12 crores. Section 34(3) of the Income-Tax Act imposes a condition for the creation of resreves to the extent of 75 per cent of the development rebate to be actually allowed. Since the development reserve was Rs. 7,23,47,222 only, the Commission's claim for development rebate at the rate of 35 per cent would be limited to; Rs. 9,64,62,962.

Shri Bhandare for the workmen contends that the only development rebate permissible is in respect of plant and machinery, that the additions, including transfers and reclassification during the year 1966-67 as given in Col. 4 of Exhibit M-3 at page 36 was Rs. 6,28,52,848 and the deductions, including transfers, reclassifications, disposals and write offs during the year were Rs. 3.15 crores and that consequently, the difference in cost would be only Rs. 3.13 crores and development rebate at the rate of 36 per cent would be only Rs. 2.00 crores. Shri Bhandare contends that what Shri Tiwary has done is not correct and that Exhibit M-10 cannot be looked into in face of Exhibit

M-3 for that purpose. Nor has Shri Tiwary given, says Shri Bhandare, details as to now he has arrived at the figure of Rs. 14 crores and odd.

As against this, the learned counsel for the ONGC relies on the statemet of Shri M. N. Tiwary who stated that a large number of items of plant and machinery were not included in the Schedule of Fixed Assets but were shown as consumption under Development Expenditure and elsewhere. These were largely the items of machinery used below ground and these items had. therefore, to be included in the statement prepared for development rebate. Shri Tiwary further states that additions to tools and equipment have also been made and there are vaflous items of plant and machinery worth over Rs. 56 lakhs included in transport vehicles on page 36 of Exhibit M-3, on which development rebate is admissible. As stated by him, the three main heads are—

(i) plant and machinery;

(ii) transport vehicles; and

(iii) tools and equipment,

where the additions shown in the statement of development rebate would be noticeably in excess of the additions shown at page 36 of Exhibit M-3. The difference between the additions shown in Exhibit M-3 and the statement with the revised return is due to reclassification of various items as contained in the relevant depreciation statements and also due to the inclusion in the statement of development rebate of assets which were shown under the head "Development Expenditure". Shri Tiwary has also proved the statement of development rebate filed along with the revised return. various items on which development rebate has been It is shown in Exhibit M-10. It gives the details of the claimed and the manner in which the amount of Rs. 4,75,81,290 has been arrived at. After calculation, the total cost of those items comes to Rs. 14,19,72,815 and 35 per cent of this under the Income-Tax Act comes to Rs. 4,96,90,485. After deducting Rs. 21,09,285, as mentioned earlier, the development rebate admissible in accordance with Exhibit M-10 is Rs. 4.75,81,200. I see no reason to disbelieve the sworn testimony of Shri M. N. Tiwary and to discard Exhibit M-10, the statement filed along with the Revised Income-Tax return and accepted by the Income Tax Officer. I do not agree with Shri Bhandare that the development rebate for the current year would be only Rs. 1.09 crores. The amount of development rebate allowable as per the Payment of Bonus Act, 1965 and deductible under Section 6(b) of the Act. will therefore. be united to Rs. 9,64,62,962.

I find this Issue accordingly for the Management.

Issue 2:

Whether the following amounts are allowable for computation of Gross Profits under the Payment of Bonus Act, 1965 and if allowable, to what extent?

(i) Depletion of Producing Property: Rs. 96,78,070 (net, after deducting depreciation); and

(ii) Amortisation of Development Expenditure in areas other than Producing Properties: Rs. 4,65,22,374 (net, after deducting depreciation).

The ONGC claims Rs. 96,78,070 by way of depletion of producing properties representing 1/15th of the value of the producing fields upto the year in which they were declared commercially productivity. It excludes the proportionate amount of depreciation in respect of fixed Assets utilised in the development of the fields. The ONGC has estimated the life of the producing field at 15 years and has recouped the proportionate amount each year from the revenues and the profit and loss account. The ONGC also claims Rs. 4,65,22,374 as an allowable amount by way of amortization on development expenditure in areas other than producing properties. This amount represents 1/15th of the expenditure in such areas upto 1966-67 and has been charged as expenditure in the Profit and Loss Account.

The Payment of Bonus Act does not use the words 'depletion' or 'amortisation'. They are words of the trade. The Income-Tax Act, however, used the word 'amortisation' in Section 42. There are, thus, two kinds of amortization—(i) considered by the Income-Tax Act and (ii) deduction in accordance with the trade practice. The Income-Tax Officer considered amortization as provided for in Section 42 of the Income-Tax Act. Clause (c) of Section 42 of the Act refers to depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun and for such succeeding year or years as may be specified in the agreement. M-36 is the Agreement entered into in 1966 between the ONGC and the Government under Section 42 of the Act. The Commission first struck oil in Ankleshwar field on 1st April 1964. The Agreement shows that the Government of India provided the entire capital, requires the Commission to submit periodical reports and returns of its working annual buget proposals for the approval of the Government of India and has the power to give directions to the Commission for proper discharge of its functions and also assign to it such fuctions as it may choose under the Act. The Agreement further provides that in addition to the allowances admissible under the Income-Tax Act of 1961, the following expenses shall be allowed as deduction in the assessments of the Commission:—

(i) All expenses (other than those covered by grants paid by the Government to meet infructuous abortive expenditure) on exploration prospecting or drilling in areas whether abortive or not incurred prior to the 1st April, 1964 shall be allowed as a deduction equally over a period of 15 years commencing from the assessment year 1964-65;

(ii) All expenses on exploration and drilling incurred on or after the 1st April 1964 in Ankleshwar aera shall be allowed as deduction in the year in which such expenses are incurred;

(iii) All expenses on exploration, prospecting or drilling, incurred on or after the 1st April, 1964 in areas which are ultimately surrendered as abortive, shall be allowed equally over a period of 15 years commencing from the assessment year following the previous year in which the area is surrendered as abortive;

(iv) All expenses in area where commercial production started or may start and incurred or may be incurred on or after 1st April 1964, to the date of such commercial production are to be allowed equally over a period of 15 years commencing from the assessment year following the previous year in which commercial production starts; and

(v) All such expenses in areas where commercial production starts, incurred on or after the date when such commercial production starts are to be allowed as deduction in the year in which such expenses are incurred.

The ONGC wants to have the Agreement revised and the I.T.O. disallowed what was claimed under the proposed revised agreement but allowed Rs. 3,57,21,795 only Exhibit M-3 contains a map showing the extent of the activities of the ONGC. Many of the fields were unproductive and had to be given up. As mentioned in Chapter I of Exhibit M-3. oil was discovered in Dholka structure in Gujarat in 1966-67. Exploratory work was carried out in Jammu and Kashmir, Punjab, U.P., Bihar, West Bengal, Assam, Orissa, Andhra Pradesh, Madras, Gujarat, Rajasthan and other areas like the Andamans and Nicobar Islands. 13 geological, 12 gravity maghetic, 25 setsmic, and 11 electrologging parties were in operation during the major part of the year and an area of 800 sq. kms was covered by detailed mapping, 4584 sq. kms by smi-detailed mapping, 4370 sq. Kms. by reconnaissance mapping by the geological field parties who also traversed 4194 line kms The gravity magnetic field parties similarly measured 14786 gravity-magnetic stations and the departmental seismic

parties covered an area of 6954 line kms. The Russian off-shore seismic party operated under contract in the Gulf of Cambay upto 23rd December 1966 and covered 5029 line kms. The production of oil and gas commenced during the Third Plan period and the cumulative production of oil and supply of associated and non-associated gas till March 31, 1967 amounted to 5.98 million tons and 291.19 million cubic metres respectively. The gross expenditure incurred by the Commission on exploration and production since its inception upto the end of 1966-67 was Rs. 182.30 crores. The receipts on account of sale of crude oil and gas amounted to Rs. 48.80 crores. Thus, the ratio between the expenditure and receipts was approximately 182 crores: 48 crores.

Chapter III of Exhibit M-3 gives details of geological surveys and electrologging. Chapter IV of Exhibit M-3 gives details of the exploratory drilling, Chapter V of production, Chapter VI of Pipelines and Chapter XI of Overseas operations. All this gives the extent of activities of the ONGC which are surely very vast in nature involving heavy expenditure. The future is promising both for production and expenditure.

Smith and Brock in their Book 'Accounting for Oil and Gas Producers deal on pages 15 to 19 with various exploration methods including geological exploration methods, geophysical exploration electrical methods, gravitational methods, seismic methods. In conclusion they observe: "Although exploration devices have been refined and developed to an amazing extent in recent years, there is still uncertainty that oil or gas will be found in a prospective area until a test-well is drilled. The chances are good that the exploratory well will be dry as evidenced by the fact that in 1956 approximately 84 per cent of 13,034 wildcat wells drilled in the U.S. were dry. Even if the well is located in or near a producing area it is still probable that the result will be a duster. This is made clear by 1956 statistics which show that a total of 58,160 wells were completed in the U.S. of which 22,887 were dry. Obviously, then, scientific exploration can only increase the chance of success—it cannot guarantee against failure." These observations learly show that it is seldom that one strikes oil. The work has, however, to go on, for oil is a necessity in modern times for the development of a country.

Irving and Draper in their Book "Accounting Practices in the Petroleum Industry" say "While tremendous scientific advances have been made, there is still one way to determine the existence of oil in a particular area and that is to drill for it. Many locations which appear most favourable based on geological or geophysical information finally result only in dry holes. Drilling operations in such cases frequently confirm that oil has been in the area but has migrated elsewhere. This occurrence leads to the frequently heard saying that "the well was a geological success but a commercial failure". These observations also emphasise the difficulties and heavy expenditure in the way of producing companies. Inspite of them, the ONGC, the only public sector organisation engaged in the business in this country, has to go on.

The properties of the ONGC may be classified in three heads:—

(i) *Producing properties.*—Where production is supposed to have commenced on commercial basis reflected in the Profit and Loss Account.

(ii) *Pre-producing-fields.*—Where exploration activities have result in confirmation of oil reserves but for reasons of commercial expediency or other reasons, production has not yet commenced.

(iii) *Non-productive fields.*—These are of two kinds:—

(a) exploration going on but the deposits not found;

(b) exploration given up and expenses have become infructuous.

Depletion relates to costs incurred in producing fields and amortization to costs incurred in search for oil which proved abortive. Shri V. R. Mehta, MW-3, states that if we take the technical meaning of the words 'amortization' and 'depletion', they mean basically the same thing. But the word 'depletion' has been used to signify the share towards the original expenditure that was incurred for producing areas and that is being written on along with the depletion of the reserves. Amortization deals with the writing off of the expenses incurred and being incurred in areas other than those which are confirmed producing areas. He explains that on page 38 of Exhibit M-3 the entry of Rs. 5.42 crores and odd against development expenditure in areas other than producing properties written off indicates the amortization of expenses incurred and being incurred on exploration and development. He also confirms that the entry of Rs. 1,12,55,317 in Exhibit M-27 is 'depletion' according to him. In Exhibit M-3 on page 31 against Item No. (c) under 'Fixed Assets the amount of Rs. 1,12,65,317 written off is shown as a deduction. According to Shri Mehta, this entry should rightly go in the Profit and Loss Account. He further states that depletion and amortization represent the share debitable against revenue of the year under consideration. He states further, "when an oil exploration industry starts oil exploration business, they do not know at the time of commencement whether their search in a particular area will be successful or not. The expenditure which has been incurred in a particular area is converted into a fixed asset and shown under producing property when the efforts become commercially successful. Expenditure that is being incurred on exploration year by year whether it should be debited to profit and loss account in the year in which it is incurred or kept in suspense for the time being to be written off either in a phased way or any other way at a later date, depends upon the policy of the management in this behalf. By written off in a phased way, I mean, it is spread over a number of years.

Oil India and ONGC have got same duration, *i.e.*, 15 years during which they spread it over. The expenditure on exploration whether it results in the establishment of producing property or not has to be ultimately recovered from the revenue."

This is his view. He has been working in the Ministry of Finance since November 1960 and his normal functions are Cost Examination for various industries. He is a disinterested witness. We have only to see whether his views are right or wrong. Exhibits M-3 and M-27 give details of production expenditure. It is also clear from Shri Mehta's statement that the Oil India and the ONGC both fix the period as 15 years.

We have already seen that Exhibit M-3 at page 30 mentions under Fixed Assets (c) producing properties balance on 1st April, 1966 as Rs. 15,23,66,563. Exhibit M-31 gives the details of producing properties and depletion thereof and mentions the figure of Rs. 16 88,29 748 in col. 1 and this amount of Rs. 1,12,55,317 in the column of depletion. The same was the figure for depletion for the year 1965-66. The balance on page 31 of Exhibit M-3 and Exhibit M-31 both after deduction of this depletion from Rs. 15 23 66 563 amount is Rs. 14,11,11,246 The sum of Rs. 1,12 55 317 shown as depletion is 1/15 of the gross amount of Rs. 16,88,29,748.

Shri Vaidyanathan MW-2, states that he prepared the statements Exhibits M-30 and M-31 from the accounts of various years and the expenditure on properties other than producing properties is written off during the period of 15 years. He states further that from the time they take out oil or gas from a particular field in sizable quantities and commercial production starts the value of producing property is written off in 15 years. He further states that the amount of Rs. 14.46 lakhs included in the details of production expenditure in Exhibit M-27 represents the expenditure incurred in developing field after it reaches the stage of commercial production. He also deposes that in Exhibit M-31 he has given the details of the sum of Rs. 5 42 crores as well as depreciation included in the amortization. By amortization, he means expenditure on the

areas other than those, which have been declared as commercially producing, written off uniformly over a period of years. He also deposes that such expenditure is written off over a period of 15 years in the ONGC. He states further that since the oil drilling industry has to spend enormous amount on the exploration of oil before oil can be found and at the time of commencement of such expenditure it would be impossible for the management to know whether the field would be productive or would have to be ultimately abandoned. As a matter of prudence a suitable amount out of the total expenditure is charged to the Profit and Loss Account in order to avoid a situation wherein suddenly large amounts are debited to the Profit and Loss Account, on account of abortive ventures. He states that all the expenditure on the exploration which is likely to prove abortive is not in the nature of capital expenditure and he would style it as an item of 'deferred revenue expenditure'.

No evidence has been produced to contradict the statement of Shri Vaidyanathan and Shri Mehta, two expert witnesses. We have only to see whether the views expressed by them are correct or not.

Learned counsel for the ONGC relies on Smith & Brock's Accounting for Oil and Gas Producers and Waller's 'Oil Accounting' for the proposition that the practice adopted by the ONGC for depletion and amortization is in accordance with the prevalent practice of accounting and the two figures of depletion and amortization have to be deducted from the Profit and Loss Account. Shri Bhandare for the workmen, on the other hand, contends that both amortization and depletion are capital expenditure since the expenditure is for bringing into existence an asset of enduring benefit.

Kanga and Palkhiwala in their Commentary on the Income Tax Act say that Capital Expenditure is deductible only when the statute expressly so provides, for instance, capital expenditure on scientific research (Section 35) on acquisition of patent rights or copy rights (Section 35-A), on promotion of family planning [Section 36(1)(9)] and on prospecting for or extraction or production of mineral oils (Section 42). In other words, according to them, the expenditure on prospecting for or extraction or production of mineral oil is Capital Expenditure. When commenting on Section 42, however, they say that that Section read with such an agreement with the Central Government would permit an assessee to claim allowances which may be on general principles be inadmissible, *e.g.*, allowances relating to diminution or exhaustion of wasting capital assets or allowances in respect of expenditure which would be regarded as on capital account on the ground that it brings into existence an asset of enduring benefit or constitutes initial expenditure incurred in setting the profit-earning machinery in motion. The principle underlying the distinction between the Capital Expenditure and Revenue Expenditure appears from these observations to be that an expenditure is to be treated as Capital if it is intended to bring into existence an asset of enduring benefit or sets the profit-earning machinery in motion.

In William Pickle's book "Accountancy" on page 189, they say that although it is extremely difficult to lay down a hard and fast rule regarding the dividing line separating a Capital Expenditure from Revenue Expenditure and although there is much divergence of opinion and practice on this matter, the main distinguishing principles are two-fold :—

(i) Any expenditure which is undertaken for the purpose of increasing profits either positively by way of increasing earning capacity or negatively by decreasing working capital is a Capital Expenditure;

(ii) If the expenditure, whether increasing the earning capacity or not, produces an asset comparatively permanent in character, it is Capital Expenditure.

Capital Expenditure is, therefore, according to William Pickles, an outlay resulting in the increase or acquisition of an asset or increase in the earning capacity of a business. Revenue Expenditure, on the other hand, is such outlay as is necessary for the maintenance of earning capacity, including the upkeep of the fixed assets in a fully efficient state, and the normal total cost involved in selling, including the cost of goods and services of the business to which it relates. This will also show that where an expenditure results in the increase or acquisition of an asset or increase in the earning capacity of a business, it is Capital Expenditure.

Applying this principle to the oil and gas industry, the expenditure incurred on adding a producing field to the existing producing ones, increases the earning capacity of the industry and produces as asset comparatively of a permanent character. It is, therefore, Capital Expenditure. But since an asset so produced is a wasting asset the asset itself would be exhausted within a certain number of years. The estimated life of a producing field is taken by the ONGC to be 15 years and the entire capital expenditure is spread over a period of 15 years. When a provision for depletion is made in the accounts at the rate of 1/15th of this Capital Expenditure, it does not cease to be capital expenditure. It is only a contribution out of the net profits towards the Capital expenditure by the industry. The nature itself does not change. In fact, in the annual accounts of 1966-67 the ONGC itself has shown this amount of depletion of Rs. 1,12,53,317 in the balance sheet under the heading 'Fixed Assets'. The amount of depletion has, therefore, to be treated as a Capital Expenditure.

In this connection, the learned counsel for the workmen referred to Exhibits M-19 and M-20 and pointed out that the ONGC itself has shown the depletion as part of the producing properties below the line to indicate its nature and not directly in the Profit and Loss Account. It was not, however, called an Appropriation Account.

Shri V. H. Mehta (MW-3) himself admits that when the expenditure results in the establishment of a producing area the aggregate expenditure incurred over a period of years is converted into Capital Expenditure and shown as a Capital Asset in the balance-sheet and that from this expenditure a Company or an organisation derives enduring benefits. He also admits that the amount of depletion represents the write off of the total capital expenditure incurred on the producing area. Thus, the depletion is a progressive write off of the Capital Expenditure and is, therefore, a Capital Expenditure. Shri Mehta also admits that any expenditure which is incurred for bringing into existence assets or advantages of enduring benefit comparatively permanent in character is a Capital Expenditure. It is, thus, clear that as shown by the statement of this witness of the management itself, Rs. 96,78,070 out of Rs. 1,12,53,317—is Capital Expenditure. The sum of Rs. 15,77,247 is already included in the sum of Rs. 2,00,22,006 (vide Exhibit M-28 dealt with under Issue No. 1) to be added back as depreciation. The sum of Rs. 96,78,070 is therefore not allowable to the Management for computation of gross profits and will have to be added back under Item No. 3(d) of Schedule 2.

I find this part (I) of the Issue accordingly.

As for amortization, there is no distinction in principle. The contention of the workmen is that when a field proves abortive, the whole amount of expenditure is lost and it should be a capital loss and not a revenue loss. This contention is not without substance. The expenses when incurred are of the same nature in prospecting for oil. They are all for increase and addition of an asset or for increasing the productive capacity. The difference is only in the result of success or failure. The mere fact of success or failure of the effort will not create a distinction in the nature of the expense over the effort. If when the expenditure over a successful effort is Capital

Expenditure, the one on an unsuccessful effort will also be Capital Expenditure. For the same reason Section 42 of Income Tax Act makes provision for both kinds of cases by agreement. If amortisation expenses were not to be capital expenditure, there was no necessity for a provision of the kind of clause (a) of Section 42 of Income Tax Act. Amortisation is, therefore, a Capital Expenditure and the sum of Rs. 4,65,22,374 will have to be added back to net profits as it has been wrongly deducted by the Management in the Profit and Loss Account.

I find this part of the Issue accordingly.

Issue 6: Whether the losses incurred by the Management on the fixed assets and written off as such in the Profit and Loss Account at Rs. 11,26,050 are deductible as an allowable expenditure for the purpose of arriving at the Gross Profits under the Payment of Bonus Act, 1965?

The Commission debited in the Profit and Loss Account Rs. 11,26,050 for losses incurred in Fixed Assets and written off. The workmen contend that under item 3(d) of Schedule II it has to be added back. The ONGC contends that they are entitled to debit this item under clause (d)(1) of Schedule II to the Payment of Bonus Act but since they have taken it into consideration in preparing their Profit and Loss Account, they do not deduct it in computing the gross profits. The details of this item are as follows:

(i) Pilot plant Refinery at Cambay, abandoned.—Rs. 1,58,137.

(ii) Loss of equipment in blow-up at Rudrasagar well 25 written down value—Rs. 6,64,468.

(iii) Buildings dismantled and given at Sibsagar and Jawalamukhi.—Rs. 3,03,443.

These are clearly capital losses and under clause 3(d) of Schedule II, capital losses have to be added back. They were charged to the Profit and Loss Account. The contention that the ONGC is entitled to deduct it under item 6(d) of Second Schedule of the Payment of Bonus Act, is not correct for item 6(d) expresely excludes 'capital losses' from deduction. The amount of Rs. 11,26,050 will, therefore, have to be added back to the net profits and cannot be deducted as an allowable expenditure for the purpose of arriving at the gross profits.

I find this Issue against the Management.

Issue 5: What should be the amount deductible as direct taxes in terms of Section 6(c) of the Payment of Bonus Act, 1965 for arriving at the available surplus.

Section 2(12) of the Payment of Bonus Act defines "direct tax" which the employer is liable to pay. Section 6 provides for deduction of direct taxes from the gross profits. The relevant clause is clause (c) of Section 6, which is as follows:—

"(c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year".

This clause makes specific reference to the provisions of Section 7, which are as follows:

"7. Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:—

(a) in calculating such tax no account shall be taken of—

(i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;

(ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income Tax Act;

(iii) any exemption conferred on the employer under section 84 of the Income Tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965;

(b) .....

(c) .....

(d) where the income of any employer includes any profits and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

(e) no account shall be taken of any rebate (other than development rebate or development allowance) or credit or relief or deduction (not hereinbefore mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes [illegible] elevant annual Finance Act, for the development of any industry.

Clauses (b) and (c) of this Section are not relevant for the purposes of this case. Clauses (a), (d) and (e) of Section 7 clearly show that the direct taxes which are to be deducted under Section 6 of the Payment of Bonus Act are not to be the same as would be assessed by the Income Tax authorities under the Income Tax Act. The calculation of direct taxes would be on a national basis *vide* Delhi Cloth and General Mills Vs. their Workmen: 1971(II) Supreme Court cases. Even the gross profits are computed under Section 4 of the Act as reduced by the prior charges mentioned in sub-clauses (a) to (d) of Section 6. The gross profits and the sums deductible from the gross profits would be notional amounts as they would not be the amounts which would be computed for submission for assessment, under the Income Tax Act, to the Income Tax authorities.

Under Section 6(c) of the Payment of Bonus Act we have to find the direct taxes which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year. The direct taxes have to be calculated at the rates applicable to the income of the employer for that year. But in calculating such tax no account has to be taken under Section 7 of any losses incurred by the employer. Nor is any account to be taken of any rebate other than development rebate or development allowance. Thus, the income has to be recast taking into consideration—

(i) losses of the year only;

(ii) depreciation of the year only;

(iii) development rebate of the current year and the previous years; because clause (e) of Section 7 does not ignore development rebate of previous years.

The learned counsel for the ONGC contends that if we look into the Income Tax Officer's Revised Assessment M-39 on page 3, the whole of the calculation of the revised assessment minus depreciation for previous years may be taken into consideration with the additions of development rebate of Rs. 984 lakhs approximately.

On 8th January 1972, the workmen filed an application that the arguments with regard to calculation of direct taxes under Section 6(c) of the Payment of Bonus Act should not be permitted to be raised because the Management did not claim in its Written Statement any deduction of direct tax under Section 6(c) of the Payment of Bonus Act. This contention is without force. ONGC's Written Statement on page 18 under item No. 5 of the Reference says that "direct taxes to be deducted under Section 6(c) of the Act,

have to be calculated as provided under Section 7 irrespective of the actual amount of the tax which the Commission may be required to pay under the Income Tax Act." There could be no clearer claim of deduction of direct tax under Section 6(c) read with Section 7 of the Act. The application of the workmen, is, therefore, without force and has to be rejected.

For the purpose of calculation of direct taxes the income may be calculated as follows:—

	Rs.
1. Net Ptofit as per Profit and Loss Account	11,04,68,821
2. *Add* :	
(i) Depletion of producing properties.	1,12,55,31
(ii) Depreciation on production equipment	37,63,81 1
(iii) Development expenses of the field incurred during the year	14,46,324
(iv) Depreciation	25,00,743
(v) Loss on assets discarded/loss in accidents written off	11,26,050
(vi) Development expenditure in areas other than producting property written off	5,42,04,123
(vii) Provision for doubtful debts.	88,88,020
(viii) Increase in sale proceeds due to gas award	24,25,532
(ix) Expenses claimed as revenue in the computation of profit but found to be capital in nature	6,653
TOTAL	19,60,85,394
3. *Deduct* :	
(i) Expenditure on scientific research relating to the business admissible under Section 35(1)(i)	16,29,745
(ii) Amortization admissible under Section 42 of the Act	',57,21,795
(iii) Capital expenditure on scientific research admissible under Section 35(1) (iv)	..
(a) Carried forward from assessment year 1966-67	32,354
(b) In respect of assessment year 1967-68 (2nd instalment)	32,354
(c) In respect of expenditure incurred during the previous year relating to assessment year 1967-68 (1st instalment)	3,50,865
(iv) Depreciation	6,24,04,179
(v) Development Rebate to the extent of Rs. 9,64,63,962	9,59,14,102
[Under S.33(2) of the Income tax Act]	
TOTAL	19,60,85,394
TOTAL—INCOME	NIL.

No direct tax is, therefore, payable under Section 6(c) of the Payment of Bonus Act, 1965.

I find this Issue accordingly .

Issue 14 : *Computation of Bonus for* 1966-67 :

On the basis of the decisions on the points referred to above, what should be the bonus payable to workers for the year 1966-67 as per the Bonus Act.

The first contention of the learned counsel for the ONGC is that in view of Section 16, there are two aspects of Issue No. 14 :

(i) Positive aspect—If there is available surplus, bonus will be paid under the Bonus Act ;

(ii) Negative aspect—Under the Bonus Act, no bonus is payable under Section 16 in certain cases.

The learned counsel for the ONGC laid emphasis on Section 16 under which, according to him, no bonus was payable by the ONGC. His contention is: that the ONGC will be a newly set-up establishment under Section 16(1) of the Payment of Bonus Act which came into force on 25-9-1965. An 'establishment' is not defined in the Payment of Bonus Act. There is no doubt that the ONGC is an establishment to which the Payment of Bonus Act applies. In view of the definition of the accounting year uder Section 2 of the Payment of Bonus Act, the acccounting year in dispute is 1-4-1966 to 31-3-1967. It is urged by the learned counsel for the ONGC that the ONGC is a newly set-up establishment and that the workmen are not entitled to any bonus because the conditions of neither clause (a) nor clause (b) are satisfied in the case of the ONGC. The phrase 'newly set-up' is not defined under the Payment of Bonus Act. According to the contention of the learned counsel for the ONGC, the key to the meaning of this phrase is to be found in Section 2, Clauses (a) and (b), read with explanations (a) and (b) of Section 16(1). It is true that an establishment may be a newly set-up establishment even if it has been set-up before the commencement of the Act. But I agree with the learned counsel for the workmen that when a phrase is not defined, it will have the ordinary meaning unless there is something in the context to the contrary. Ordinarily, a newly set-up establishment is one which has been in fact newly set-up. It may not be possible to say that an establishment set-up more than two years back is not a newly set-up establishment, while one set-up two years back is a newly set-up one. But there is no doubt that an establishment set-up seven or eight years before the commencement of the Payment of Bonus Act, is not a newly set-up establishment. Clauses (a) and (b) of sub-section (1) of Section 16 of the Act provide when the employees of the establishment would be entitled to bonus. But they cannot be interpreted to mean that because the employees of an establishment are not entitled to bonus under clause (a) and (b) of sub-section (1) it would be a newly set up establishment. The interpretation of the word 'newly set-up' is not dependent upon clause (a) and (b) of sub-section (1). On the contrary, the application of these clauses would be dependent upon the fact whether or not an establishment is a newly set-up one. For instance, an establishment may be very old and even then the employer may not be deriving profits from such an establishment. For that reason the establishment cannot be said to be a newly set-up one. Similarly, the setting up of an establishment does not depend upon the sale of the goods produced or services rendered. The question of selling of the goods produced or manufactured or rendering of services arises after the establishment has been set-up. It will be further clear from explanation (III) of sub-section (1) of Section 16 of the Act that for the purpose of clause (b) whether the sale of goods produced or manufactured has been during the course of the trial run of the factory or of the prospecting stage of any mine or oil field, will depend upon the decision of the appropriate Government if a dispute arises with regard to such production or manufacture. In the present case, the ONGC Act itself came into force in 1968-59. But really, there was an existing organisation from 1956. Even under explanation (1) of sub-section (1) of Section 16 of the Act, an establishment is not to be deemed to be a newly set-up one merely by reason of change in its location, management, name or ownership. Sub-section (2) (c) of the

ONGC Act itself refers to an existing organisation set-up in pursuance of the Resolution of the Government of India dated 14th August, 1956. Section 16(1) of the ONGC Act provides that all non-recurring expenditure incurred by the Central Government for or in connection with an existing organisation declared to be Capital Expenditure by the Government shall be treated as Capital Expenditure, provided by that Government to the Commission. Similarly, under Section 17, the property of the existing organisation has been vested in the Commission. Under clause 18 of the Act, all the liabilities, rights and obligations of the Central Government, acquired or incurred in connection with the existing organisation before the date of the establishment of the Commission, are to be deemed to have been acquired or incurred by the Commission and are to be the rights, liabilities and obligations of the Commission. Surely all these provisions would have been unnecessary if the existing organisation was not to be treated as an establishment. So, the establishment cannot be deemed to be newly set up in 1959; much less can it be said to be a newly set-up establishment in 1964. As mentioned already, there is nothing in the context to give the phrase 'newly set-up' a meaning widely different or even different from the ordinary meaning of the phrase except that Section 16 will apply also to an establishment newly set-up before the commencement of the Act. Even then, it must be a newly set up establishment at the time of the commencement of the Act. There is not the slightest doubt that an existing organisation of the Government of India was turned into a Corporation. It may be that it was so done for the purpose of expension of the work or for better running of the business. But we are not concerned with the purpose. We are concerned only with what was actually done by the Government and the existence of the then existing organisation cannot be denied in view of the specific provisions of the ONGC Act itself.

As for the contention that Exhibits M-16 and M-17 (Annual Accounts for 1959-60 and 1960-61 respectively) would show that there was no production in 1959-60 or in 1960-61, the learned counsel for the workmen asks: "What about 1955-56, 1956-57, 1957-58 and 1958-59"? The management's contention is that according to page 10 of Exhibit M-18 (Annual Accounts for the year 1961-62), the revenue from sales in that year was from sales of a trial run or prospecting stage of the oil fields. This is disputed by the workmen. No decision of the 'appropriate' Government on this point after giving the parties a reasonable opportunity for representing their case, has been filed. I am not satisfied with the statement of Shri Vaidyanathan (MW—2) that the sales of 1961-62 were the first sales of the prospecting stage of the oil fields. Both MW—1 and MW—2 joined long after 1961-62. So, they are not competent to say in 1971 whether there were trial sales before they joined. The audit report in Exhibit M—18, as pointed out by Shri Tembe, makes no mention of trial sales. It has not been proved that there were no sales prior to 1959 or that there were none even in 1959-60.

For all these reasons, I find myself unable to agree with the contention of the learned counsel for the management that Section 16 of the Payment of Bonus Act debars the claim of the workmen for bonus for the year in dispute.

Moreover, the wordings of item No. 14 of the Order of Reference are also very clear and ask the Tribunal to find out the amount of the bonus for the year 1966-67 only on the basis of the decisions on the points referred to in items 1 to 13. The learned counsel for the workmen strongly contends that no disute other than the 13 items and the determination of the amount of bonus on the basis of the decisions on those items, has been referred to this Tribunal. I agree with the learned counsel that the jurisdiction of this Tribunal is limited by the Order of Reference. None of the first 13 items of the Reference relates to the question raised under Section 16 of the Bonus Act and item No. 14 is confined to the determination of the amount of bonus payable to the workers on the basis of the decisions on items 1 to 13.

Now, we have to see as to what is the amount of bonus, if any, due to the workers on the basis of the decisions on item 1 to 13.

Gross profits have to be computed in accordance with Section 4 of the Payment of Bonus Act. Clause (a) of this Section will not apply because the ONGC is not a Banking Company. Under clause (b) of the Section, the gross-profits have to be calculated in the manner specified in the Second Schedule. As mentioned in my finding on Issue No. (1), for finding out the available surplus, gross-profits have to be calculated first in accordance with Schedule II of the Payment of Bonus Act.

The first item in Schedule II of the Payment of Bonus Act is Net Profits as per Profit and Loss Account. In view of my finding on Issue No. (9), the provisions of the Companies Act are not applicable for the determination of net profits.

The net profits as shown in the Profit and Loss Account are Rs. 11,04,68,821. To this has to be added the sum of Rs. 88,88,020 as found in Issue 7 and a sum of Rs. 59,47,077 as found in Issue 8 and Rs. 11,26,050 as found in Issue 6. The total of net rofits, thus, will be Rs. 12,64,29,968. Under item 2(a) of the Second Schedule, the bonus aid to employees has to be added back. This amount has been given in Annexure IV to the Written Statement of the management as Rs. 28,34,051 (Rs. 16,00,000 for current year and Rs. 12,34,051 for the previous year) in respect of exgratia payment to employees for the years 1965-66 and 1966-67. Shri Tembe, during the course of his arguments also added back the same amount for the exgratia payment for the current year and the previous year. The sum of Rs. 16,00,000 may be added under this item and Rs. 12,34,051 under item No. 3(a).

(b) *Depreciation*

As found under Issue No. 1, the ONGC rightly added back Rs. 2,00,22,006 to the net profits.

(c) *Direct Taxes*

Since no direct tax was paid by the ONGC it was shown as Nil in the ONGC's Annexure IV to the Written Statement and has been accepted as Nil for adding back purpose on behalf of the workmen also. So, no amount has to be added back under Item 2(c).

(d) *Development Rebate/Development allowance reserve.*

This amount need not be added back to Rs. 11,04,68,821 as the entire net profits without deduction for any development rebate reserve have been shown as net profits in Annexure IV to the Management's Written Statement. It would have been necessary to add back the reserves to the net profits if it had been charged to the Profit and Loss Account. But it was not so charged. No other reserve need be added back in item No. 2.

Under sub-item (a) of item 3 of Second Schedule, we have to add back bonus aid to employees in respect of the various accounting years *i.e.* Rs. 12,34,051 as mentioned above. No amount is to be added back under item (b) in respect of donations in excess of the amount admissible for income-tax or annuity due, under item (c). This disposes of sub-items (b) and (c) of item No. 3.

Under sub-item (d) of Item 3, an amount of Rs. 96,78,070 in respect of depletion minus depreciation will have to be added back as found under Issue No. 2. The amount of Rs. 4,65,22,374 (net after deducting depreciation) in respect of amortization of

development expenditure in areas other than producing properties will also have to be added back as found under Issue 2 since it has been charged to the Profit and Loss Account. As Rs. 5,42,04,123 including depreciation of Rs. 76,81,749 have been charged to the Profit and Loss Account, we get the figure of Rs. 4,65,22,374 after deducting Rs. 76,81,749 from Rs. 5,42,04,123. The sum of Rs. 15,21,094 will, however, have to be deducted in respect of scientific research expenditure of 1966-67.

The gross profits may, therefore, be calculated thus:

		Rs.
1. Net profits		11,04,68,821
Add back :		
Doubtful debts		88,88,020
The sum not included in the sale proceeds (Issue No. 8)		59,47,077
Losses wrongly debited to the Profit & Loss Account (Issue No. 6)		11,26,060
		12,64,29,968
Item 2 *Add back* :		
(a) Bonus		16,00,000
(b) Depteciation		2,00,22,006
(c) Direct Taxes		..
(d) Development Rebate Reserve		..
(e) Any other Reserve		..
Item 3 : *Add back also* :		
(a) Bonus		12,34,051
(b) Donations		..
(c) Annuity		..
(d) Capital Expenditure :		
Depletion : 1,12,55,317 minus depreciation of Rs. 15,77,247		96,78,070
Development Expenditure of the field		14,46,324
Amortization:	4,65,22,374	4,50,01,280
Deduct Capital Expenditure on scientific research	15,21,094	
	4,50,01,280	
TOTAL		20,54,11,699

The total gross profits will, therefore, be Rs. 20,54, 11,699.

Out of this, we have to make the following deductions under Section 6 of the Act, as found under Issue No. 1:—

Rs. 6,24,04,179 has to be deducted under Section (a) in respect of Depreciation as found under Issue No. 1. An amount limited to Rs. 9,64,62,962 will have to be deducted in respect of Development Rebate under Section 6(b) as found under Issue No. 3. No amount has to be deducted in respect of Direct Taxes under Section 6(c), as found under Issue No. 5, Rs. 9,49,39, 591 will have to be deducted under Section 6(d) read with Schedule III in respect of 8.5 per cent of the paid up capital of Rs. 1,11,69,36,374 at the commencement of the accounting year, as found under Issues 11 and 12. Rs. 15,51,167 will also have to be deducted under Schedule III, Section 6(d) by way of 6 per cent of the Reserve shown at page 30 of Exhibit M-3 (Development Rebate Reserve opening balance: Rs. 2,54,52,778 plus Rs. 4,00,000 as Insurance Reserve opening balance=Rs. 2,58,52,778). The deductions amount to Rs. 25,48,09,039. The calculations are given below in respect of deductions under Section 6:

Deductions:

	Rs.
Depreciation under Section 6(a)	6,24,04,178
Development Rebate under Section 6(b) [Read with Sec. 33(2) of the Income tax Act].	9,59,14,102
Direct Taxes under Section 6(c)	Nil.
Return on the paid-up capital of Rs. 1,11,69,36,374 under Section 6(d)and Schedule III item 3	9,49,39,591
Return on Reserves at 6% on Rs. 2,58,521 under Section 6(d) and Schedule III, item (3)	15,51,167
	25,48,09,039

Thus the deductions exceed the amount of gross profits and the result is that there is no available surplus under Section 5 of the Payment of Bonus Act. It is certainly hard on the workmen that although the profit and loss account shows a net profit of Rs. 11,04,68,821, no available surplus can be found under Section 5 of the Payment of Bonus Act to allow more than the minimum bonus to be paid to them. I agree entirely with the learned counsel for the workmen that the workmen should have a share in the profits of a concern by way of bonus. The contention is that the Payment of Bonus Act should not be so interpreted as to turn net profits into loss when considering the question of payment of bonus to the workmen. Some of the provisions of the Act are not happily worded. Nor can it be denied that the Act itself badly needs amendment But the Tribunal has to interpret the Act as it stands and in view of the existing provisions of the Act, it is not possible, in spite of the net profits of Rs. 11 crores, to arrive at a finding that there is any available surplus for purposes of bonus. There has been an agreement to pay bonus at the rate of 5 per cent for 1966-67. No additional bonus higher than what has been agreed to is payable to the workmen for the year 1966-67 as per the Payment of Bonus Act.

I make an Award accordingly. In the circumstances of the case, parties will bear their own costs.

Let the Award be submitted to the Central Government.

M. CHANDRA,
Presiding Officer.

28 *February*, 1972

APPENDIX I

ANNEXURE "M-12" (3)

Statement of Total Depreciation

Assessment Year 1967-68

S. No.	Name of Asset		Depreciation
		Rs.	Rs.
1.	Building.	12,12,644	
	Additional depreciation u/s 32(i)(iv)	40,965	12,53,609
2.	Storage Tanks		3,39,682
3.	Railway sidings		77,452
4.	Pipeline		77,86,977
5.	Furniture & Fixture		7,40,102
6.	Tents & Accessories		1,60,275
7.	Tools & Equipment		47,79,602
8.	Plant & Machinery		4,55,16,768
9.	Transport Vehicle		57,90,734
			6,64,54,201
10.	Add balancing depreciation admissible under Section 32(1)(iii)		5,22,317
	Total Depreciation		6,69,76,518
	Less Depreciation surrendered		45,72,339
			6,24,04,179

ANNEXURE M. 12-3 (1)

Statement of Depreciation—Buildings

Assessment Year 1967-68

Sub-Head of Assets	W. D. V. as on 1-4-66	Additions for 180 days and more	Total of Cols. 1-2	Additions for more than 30 days but less than 180 days
	1	2	3	4
	Rs.	Rs.	Rs.	Rs.
Buildings:				
Class I	*1,11,67,862	15,51,294	1,27,19,156	1,29,601
Class I Factory	*4,53,342	..	4,53,342	..
Class II	*52,77,076	19,716	52,96,792	6,29,856
Class II Factory	17,99,390	631	18,00,021	3,80,273
Class III	*37,35,453	87,911	38,23,364	1,99,756
Class III Factory	30,585	..	30,585	1,27,496
Water pipelines and sanitary fittings	*7,77,987	45,000	8,22,987	38,417
Electrical Fittings	2,14,575	1,704	2,16,279	1,808
Electrical overhead wiring	..	..	..	68,426
	2,34,56,270	17,06,256	2,51,62,526	15,75,633

Additions for 30 days and less	Rate of dep.	Dep. on Col. 3 100%	Dep. on Col. 4 50%	Dep. on Col. 5 0%	Total of Cols. 3, 4 and 5	Total of Cols. 7, 8 and 9	WDV as on 31-3-67
5	6	7	8	9	10	11	12
Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
12,62,478	2½%	3,17,979	1,620	..	1,41,11,235	3,19,599	1,37,91,636
13,80,191	5%	22,667	..	..	18,33,533	22,667	18,10,866
36,280	5%	2,64,840	15,746	..	59,62,928	2,80,586	56,82,342
..	10%	1,80,000	19,014	..	21,80,294	1,99,016	19,81,278
5,748	7½%	2,86,752	7,491	..	40,28,868	2,94,243	37,34,625
2,44,021	15%	4,588	9,562	..	4,02,102	14,150	3,87,952
..	7%	57,609	1,345	..	8,61,404	58,954	8,02,450
..	10%	21,628	90	..	2,18,087	21,718	1,96,369
92,628	5%	..	1,711	..	1,61,054	1,711	1,59,343
30,21,346	..	11,56,065	56,579	..	2,97,59,505	12,12,644	2,85,46,861

*W.D.V. has been adjusted due to reclassification etc. vide reconciliation statement.

ANNEXURE 'M'-12—3 (ii)

Additional Depreciation under Section 32(1)(iv) on Buildings

Assessment Year 1967-68

Name of Asset	Actual cost	Rate of additional depreciation	Amount of Depreciation
1	2	3	4
	Rs.		Rs.
Canteen . . .	67,516	20%	13,503
Auditorium . .	1,37,312	20%	27,462
	2,04,828		40,965

ANNEXURE 'M'-12—3 (iii)

Statement of Depreciation Storage Tank

Assessment Year 1967-68

Assets	W. D. V. as on 1-4-66	Additions for 180 days and more	Total of Col. 1 & 2	Add for more than 30 days but less than 180 days
	1	2	3	4
	Rs.	Rs.	Rs.	Rs.
Storage Tanks	22,92,834	7,13,992	30,06,826	18,650
Drillings machinery above ground well head tanks . . .	13,994	1,04,506	1,18,500	16,770
TOTAL	23,06,828	8,18,498	31,25,326	35,420

Additions for 30 days and less	Rate of Dep.	Depreciation on Col. 3 100%	Depreciation on Col. 4 50%	Depreciation on Col. 5 0%	Totals of Cols. 4 & 5	Total of Cols. 7, 8 & 9	W. D. V. as on 31-3-67
5	6	7	8	9	10	11	12
Rs.		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
..	10%	3,00,683	933	..	30,25,476	3,01,616	27,23,860
32,978	30%	35,550	2,516	..	1,68,248	38,066	1,30,182
32,978		3,36,233	3,449	..	31,93,724	3,39,682	28,54,042

ANNEXURE 'M'-12—3 (iv)

Statement of Depreciation—Railway sidings

Assessment Year 1967-68

Assets	W. D. V. as on 1-4-66	Additions for 180 days and more	Total of Cols. 1 & 2	Add. for more than 30 days but less than 180 days
	1	2	3	4
	Rs.	Rs.	Rs.	Rs.
Railway sidings	10,94,443	..	10,94,443	24,021
TOTAL	10,94,443	..	10,94,443	24,021

Add. for 30 days and less	Rate of Dep.	Dep. on Col. 3 100%	Dep. on Col. 4 50%	Dep. on Col. 5 0%	Total of Cols. 3, 4 & 5	Total of Cols. 7, 8 and 9	W. D. V. as on 31-3-67
5	6	7	8	9	10	11	12
Rs.		Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
..	7%	76,611	841	..	11,18,464	77,452	10,41,012
..		76,611	841	..	11,18,464	77,452	10,41,012

ANNEXURE 'M'-12—3(v)

Statement of Depreciation—Pipelines

Assessment Year 1967-68

Assets	W.D.V. as on 1-4-66	Additions for 180 days or more	Total of Cols. 1 and 2	Additions for more than 30 days but less than 180 days	Add. for 30 days and less
	1	2	3	4	5
	Rs.	Rs.	Rs.	Rs.	Rs.
Pipelines	3,77,01,606	3,10,16,239	6,87,17,845	1,83,03,843	..
	3,77,01,606	3,10,16,239	6,87,17,845	1,83,03,843	..

Rate of Dep.	Dep. on Col. 3 100%	Dep. on Col. 4 50%	Dep. on Col. 5 0%	Total of Cols.3, 4 & 5	Total of Cols. 7, 8 & 9	W.D.V. as on 31-3-67
6	7	8	9	10	11	12
	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
10%	68,71,785	9,15,192	..	8,70,21,688	77,86,977	7,92,34,711
..	68,71,785	9,15,192	..	8,70,21,688	77,86,977	7,92,34,711

ANNEXURE 'M'-12—3(vi)

Statement of Depreciation—Furniture & Fixture
Assessment Year 1967-68

Assests	W.D.V. as on 1-4-66	Additions for 180 days and more	Total of Col. 1 & 2	Additions for more than 30 days but less than 180 days	Additions for 30 days and less
	1	2	3	4	5
Office furniture	*25,77,653	1,80, 553	27,58,206	2,48,719	3,37,592
Office equipment	*11,38,114	2,62,854	14,00,968	1,68,231	2,36,402
General tools and equipment	5,757	4,365	10,122	..	1,110
Air compressor	..	..	..	8,158	..
Precision tools and equipment	..	..	..	7,687	..
Projector — cycle	3,858	..	3,858	..	..
Additions of the nature of plant and machinery each item costing not more thna Rs. 750/-	..	2,35,733	2,35,733	..	..
	37,25,382	6,83,505	44,08,887	4,32,795	5,75,104

Rate of dep.	Dep. on Col. 3 100%	Dep. on Col. 4 50%	Dep. on Col 5 0%	Total of Col. 3, 4 and 5	Total of Col. 7, 8 and 9.	W.D.V. (10-11)
6	7	8	9	10	12	12
10%	2,75,821	12,436	..	33,44,517	2,88,257	30,36,260
15%	2,10,145	12,617	..	18,05,601	2,22,762	15,82,839
7%	709	..	..	11,232	709	10,523
10%	..	408	..	8,158	408	7,750
12%	..	461	..	7,687	461	7,226
20%	772	..	..	3,858	772	3,086
100%	2,35,733	..	..	2,35,733	2,35,733	..
	7,23,180	25,992	..	54,16,786	7,49,102	46,67,684

*W.D.V. reduced due to reclassification *vide* statement of reconciliation.

ANNEXURE 'M'-12—3. (vii)

*Statement of Depreciation—Tents & Accessories**
Assessment Year 1967-68

Assests	W.D.V. as on 1-4-66	Additions for 180 days and more	Total of Col. 1 and 2	Additions for more than 30 days but less than 180 days	Additions for 20 days and less
	1	2	3	4	5
Tents and Accessories	*14,24,884	51,001	14,75,885	1,80,350	1,02,123
Bunk Houses Class III Factory buildings	24,453	..	24,453	..	..
	14,49,337	51,001	15,00,338	1,80,350	1,02,123

Rate of dep.	Dep. on col. 3 100%	Dep. on Col. 5 50%	Dep.on Col. 4 0%	Total of Col 3, 4 and 5	Total of Col. 7, 8 and 9.	W.D.V. (10-11)
6	7	8	9	10	11	12
10%	1,47,589	9,018	..	17,58,358	1,56,607	16,01,751
15%	3,668	..	..	24,453	3,668	20,785
	1,51,257	9,018	..	17,82,811	1,60,275	16,22,536

*W.D.V. reduced due to discarding of tarpolines.

ANNEXURE—'M'-12—3(viii)

Statement of Depreciation—Tools and Equipment

Assessment Year 1967-68

Assests	W.D. V. as on 1-4-66	Additions for 180 days and more	Total of Col. 1 & 2	Additions for more than 30 days but less than 180 days.	Addition for 30 days and less
	1	2	3	4	5
Machine tools & precision equipment	*1,15,45,570	5,05,748	1,20,51,318	5,61,943	16,88,846
Drilling tools & equipment above ground.	*75,97,170	6,15,414	82,12,584	7,63,012	62,74,034
Welding plant and electrical equipment	1,94,348	68,392	2,62,740	51,156	..
Wireless sets and pumps etc.	12,56,369	15,557	12,71,926	10,573	1,60,919
Tractors & foam tenders	5,84,493	..	5,84,493	..	..
Drilling tools sub-surface and underground	66,802	52,629	1,19,431	86,755	13,138
Fire fighting equipment and general	4,82,568	..	4,82,668	4,517	..
X-Ray equipment	5,174	3,943	9,117	306	..
Motor trailers and bus	30,642	..	30,642	..	..
Additions to P&M each item costing not more than Rs. 750/-	..	1,48,644	1,48,644	..	..
	2,17,63,236	14,10,327	2,31,73,563	14,78,762	81,36,937

6	7	8	9	10	11	12
Rate of dep.	Dep. on Col 3. 100%	Dep. on Col. 4 50%	Dep. on Col.5 0%	Total of Co. 3 4 & 5.	Total of Col. 7 8 & 9.	W.D. V. on 31-3-67 (10-11)
12%	14,46,158	33,717	..	1,43,02,107	14,79,875	1,28,22,232
30%	24,63,775	1,14,452	..	1,52,49,630	25,78,227	1,26,71,403
10%	26,274	2,558	..	3,13,896	28,832	2,35,064
13%	1,90,789	793	..	14,43,418	1,91,582	12,51,836
25%	1,46,123	..	..	5,84,493	1,46,123	4,38,370
100%	1,19,431	43,378	..	2,19,324	1,62,809	56,515
7%	33,787	158	..	4,87,185	33,945	4,53,240
20%	1,823	81	..	9,923	1,904	8,019
25%	7,661	..	..	30,642	7,661	22,981
100%	1,48,644	..	..	1,48,644	1,48,644	..
	45,84,465	1,95,137	..	3,27,89,262	47,79,602	2,80,09,660

1. *W.D.V. reduced due to reclassification *vide* statement of reconciliation.

2. Rs. 38,779 being W.D.V. of cranes has been transferred to plant and machinery.

ANNEXURE—'M'-12—3(ix)

Statement of Depreciation—Plant & Machinery

Assessment Year 1967-68

Assets	W.D.V. as on 1-4-66	Additions for 180 days and more	Total of Col. 1 & 2	Additions for more than 30 days, but less than 180 days.	Additions for 30 days and less
	1	2	3	4	5
Non-drilling equipment	*2,05,37, 980	2,173	2,05,40,153	5,87,113	..
Drilling equipment underground	*5,03,23,404	22,15,700	5,25,39,104	73,86,097	2,24,81,888
Drilling equipment underground	90,06,219	82,17,339	1,72,23,558	1,66,76,642	43,86,890
Cranes	*1,01,67,531	13,35,876	1,15,03,507	21,62,404	32,17,321
Tractors & Foam Tenders	1,09,935	1,18,322	2,28,257	..	9,11,001
Transport vehicles (Trucks & Buses)	..	..	..	..	10,438
Earth moving equipment & pumps	5,96,133	42,154	6,38,287	4,89,383	1,88,505
Machine tools	7,06,253	53,564	7,59,817	20,15,116	8,79,381
Projectors	..	1,083	1,083	1,448	..
Welding plant and air compressors	25,12,849	4,30,624	29,43,473	7,01,708	3,31,128
Additions of the nature of plant and machinery, each item costing note more than Rs. 750/-	..	10,064	10,064	..	..
	9,39,60,404	1,24,26,899	10,63,87,303	3,01,09,910	3,24,01,552

Rate of depreciation	Dep. on col. 3 100%	Dep. on Col. 4 50%	Dep. on Col. 5 0%	Total of Col. 3, 4 & 5	Total of Col. 7, 8 & 9.	W.D.V. as on 31-3-67 (10-11)
6	7	8	9	10	11	12
7%	14,37,811	20,549	..	2,11,27,266	14,58,360	1,96,68,906
30%	1,57,61,731	11,07,915	..	8,24,07,089	1,68,69,646	6,55,37,443
100%	1,72,23,558	83,38,321	..	3,82,87,990	2,55,61,879	1,27,25,211
7%	8,05,245	75,684	..	1.68,83,232	8,80,929	1,60,02,303
25%	57,064	..	..	11,39,258	57,064	10,82,194
25%	..	..	..	10,438	..	10,438
15%	95,743	36,704	..	13,11,174	1,32,447	11,78,727
12%	91,178	1,20,907	..	36,54,314	2,12,085	34,42,229
20%	217	415	..	2,531	362	2,169
10%	2,94,347	39,585	..	40,66,309	3,33,932	37,32,377
100%	10,064	..	..	10,064	10,064	..
	3,57,76,958	97,39,810	..	16,88,98,765	4,55,16,768	12,33,81,997

*W.D.V. reduced due to reclassi fication *vide* statement of reconciliation.

ANNEXURE—'M'-12—3(x)

Statement of Depreciation Transport Vehicles

Assessment Year 1967-68

Assests	W.D.V. as on 1-4-66	Additions for 180 days and more	Total o f Col. 1 and 2	Additions for more than 30 days but less than 180 days	Addtions for 30 days and less
	1	2	3	4	5
Cars and jeeps	* 35,93,839	11,17,840	47,11,679	5,08,750	6,75,027
Truck and buses	*1,17,55,343	7,84,031	1,25,39,374	14,42,391	..
Earth moving and road making plant & machinery	*14,89,754	..	14,89,754	..	10,32,296
Tractors & foam tenders	43,32,151	4,15,571	47,47,722	1,85,433	32,50,615
Drilling machinery above ground	62,390	..	62,390	..	..
Mobile trolley and air operated compressor	2,007	..	2,007	..	3,85,494
Rubber Boats	..	..	..	..	1,64,024
Motor Launch	..	2,11,640	2,11,640	..	..
Additions of the nature of plant and machinery each item costing not more than Rs 750/-	..	3,434	3,434	..	..
	2,12,35,484	25,32,516	2,37,68,000	21,36,574	65,07,456

Rate of Depr.	Dep .on Col. 3 100%	Dep. on Col. 4 50%	Dep. on Col.5 0%	Total of Col. 3, 4 and 5.	Total of Col. 7, 8, and 9	W.D.V. 31-3-67 (10-11)
6	7	8	9	10	11	12
20%	9,42,336	50,875	..	58,95,456	9,93,211	49,02,245
25%	31,34,844	1,80,299	..	1,39,81,765	33,15,143	1,06,66,622
15%	2,23,463	..	..	25,22,050	2,23,463	22,98,587
25%	11,86,931	23,179	..	81,83,770	12,10,110	69,73,660
30%	18,717	..	..	62,390	18,717	43,673
10%	201	.	..	3,87,501	201	3,87,300
7%	..	..	..	1,64,024	..	1,64,024
12·5%	26,455	..	..	2,11,640	26,455	1,85,185
10%	3,434	..	.	3,434	3,434	..
	55,36,381	2,54,353	.	3,14,12,030	57,90,734	2,56,21,296

* W.D.V. reduced due to reclassification *vide* statement of reconciliation.

APPENDIX II

NIT-3 OF 1970

Statements and Documents filed by the Management (ONGC)

Exhibits : (1) Written Statement dated 7-1-71
(2) Rejoinder dated 30-1-71

M-1	Annexure I	to the Written Statement dated 7-1-71 of ONGC	Notification dated 5-11-60 of Min. of Steel, Mines & Fuel ONGC Rules,1970.
M-2	Annexure II	,,	Annual Accounts for 1965-66 & audit report ONGC.
M-3	,,	,,	Annual Report and Accounts 1966-67
M-4	,,	,,	Annual Report and Accounts 1967-68.
M-5 (M-12 M-30)	Annexure III	,,	Depreciation Chart Assessment Year 1967-68 Accounting year 1966-67.
M-6	Annexure IV	,,	Computation of final figures of Profit/ Loss for the A. year ending 31st March 1967 Statement I.
M-7	,,	,,	Income-tax Calculation Statement II.
M-8	,,	,,	Computation of Profits for the accounting year ending 31st March, 1967 Statement III.
M-9	Documents dated 29-4-71 pertaining to Assessment, Expenditure and Depreciation.		Extract from Assessment Order for Assessment year 1966-67.

M-10 Statement showing the Additions of the nature of Plant and Machinery on which development rebate is admissible. Assessment Year 1967-68.

M-11 Statement showing Development Rebate to be surrendered.

M-12 M-5 M-38) Statement of Total Depreciation. Assessment Year 1967-68. (with 10 other statements).

M-13 Statement showing the Balancing Charge and Balancing Depreciation on assets sold, demolished or discarded. Assessment Year 1967-68.

M-14 Statement of Reconciliation of W.D.V. as on 31-3-66 and 1-4-66. Accounting Year 1966-67. Assessment Year 1967-68.

M-15 Statement showing the depreciation to be surrendered

M-16	Documents presented at Dehra Dun on 25-9-71.	Audit Report on the Annual Accounts of the Oil and Natural Gas Commission for 1959-60.
M-17	,,	Audit Report on the Annual Accounts of the Oil and Natural Gas Commission for 1960-61.
M-18	,,	Audit Report on the Annual Accounts of the Oil and Natural Gas Commission for 1961-62.
M-19		Audit Report on the Annual Accounts of the Oil and Natural Gas Commission for 1962-63.
M-20	Documents presented at Dehra Dun on 25-9-71 by ONGC.	Annual Accounts of Oil and Natural Gas Commission 1963-64.
M-21	,,	Annual Accounts for 1964-65 and Audit Report of Oil & Natural Gas Commission 1965-66, M-2), 1966-67, M-3), 1967-68, M-4).
M-22	,,	Annual Report and Accounts 1968-69. Oil & Natural Gas Commission.

M-23 Assessment Order from ONGC for the year 1966-67.

M-24 Copy of the Revised Income Tax Returns for the year 1966-67.

M-25 Oil and Natural Gas Commission Accounts Manual. (March 1965).

M-26 Details of Provision for Doubtful Debts made in the year 1966-67.

M-27 Production Account for year ended 31st March, 1967 received with letter dated 29-4-71. Annexure-I.

M-28 Details of Depreciation included in 1966-67 Revenue Accounts received with letter dated 29-4-71 Annexure-III.

M-29 Details of General Charges 1966-67, received with letter dated 29-4-71—Annexure-II.

M-30 Hand written Calculation (Break up) for the years from 1959-60 to 1966-67 submitted at Dehra Dun on 25-9-71.

M-31 Statement for the years 1959-60 to 1966-67 showing Gross Amount of depreciation of Development Expenditure and that written off in Profit and Loss Account—submitted at Dehra Dun on 25-9-71.

M-32 Details regarding Interest Depreciation and Expenditure, furnished on 22-10-71.

M-33 Statement regarding provision for Doubtful debts in the accounts of 1966-67 and 1967-68.

M-34 Circulars amd orders regarding depreciation issued by the Commission.

M-35 Sanctions given by the Government for allocating Capital.

M-36 Agreement dated the 17th December, 1966 between the President of India and the ONGC (Under Revision).

M-37 Amendments to the ONGC's Accounts Manual (Amendment Nos. 20 to 29).

M-38 Certified copy of the Original Income tax (Returnl with enclosure) for the assessment year 1966-67 lodged with the I.T.O. on 15-2-68. (Originals—Signed copies of M-3 and M-27).

M-39 Certified copy of Assessment order dated 13-12-71 in respect of 1966-67.

M-40 Form of Accounts prescribed for ONGC by Government of India.

M-41 Award dated 10-6-71 between ONGC and I.O.C. regarding Crude Oil.

NIT-3 OF 1970

Written Statements and Documents filed by the Management of O.N.G.G. from time to time.

1. Written Statement dated 7-1-71 of ONGC
Annexure I Notification dated 5-11-60 of Min. (Genuineness of Steel. Mines & Fuel ONGC Rules, admitted) 1970 . . . . . M-1
Annexure II Annual Accounts for 1965-66 & Audit report ONGC . . M-2
Annexure II Annual Report and Accounts 1966-67 . . . . . M-3

Annexure II Annual Report and Accounts 1967-68 . . . M-4

Annexure III Depreciation Chart—Assessment year 1967-68 Accounting year 1966-67 . . . . . M-5

Annexure IV Computation of final figures of Profit/Loss for the A. Year ending 31st March, 1967. Statement I . M-6

Annexure IV Income-tax Calculation—Statement II M-7

Annexure IV Computation of Profits for the accounting year ending 31st March, 1967 Statement III . M-8

2. Joint Rejoinder dated 30-1-71 of the ONGC

Annexure V Not admitted.

3. Documents dated 29-4-71 pertaining to Assessment Expenditure and Depreciation of the ONGC

(*i*) Extract from Assessment Order for Assessment Year 1966-67 . M-9

(*ii*) Production Account for the year ending 31-3-67 (Annexure I) M-27

(*iii*) Details of General Charges ; 1966-67 (Annexure II) . M-29

(*iv*) Details of the depreciation included in 1966-67 Revenue Account (Annexure III) . . M-28

4. Documents furnished by OGNC on 15-7-71 (28-7-71) :

(*i*) Details of claim for Development Rebate M-10

(*ii*) Details of Development Rebate Surrender M-11

(*iii*) Details of Depreciation claimed M-12

(1) Details of Depreciation claimed (Bldg.)

(2) Details of Depreciation under Section 32(I) (iv)

(3) Details of Depreciation claimed Storage tank

(4) Details of Depreciation Railway Sidings . . . . .

(5) Details of Pipelines

(6) Details of Furniture & fixtures

(7) Details of Tents & Accessories

The ONGC Mazdoor Sabha did not admit any one of these documents earlier but were proved later by Managements Witnesses

(8) Details of Tools and Equipment

(9) Details of Plant and Machinery

(10) Details of Transport vehicles

(*iv*) Balancing depreciation under section 1(iii) M-13

(*v*) Statement showing the reconciliation of WDB as on 31-3-1966 and 1-4-66 . . . . . M-14

(*vi*) Statement of depreciation surrendered M-15

5. ONGC's Answer to Interrogatories dated 24-7-71 . . . .

6. Extracts relating to the Concept of "Amortization" furnished by ONGC

7. *Documents filed by ONGC at Dehra Dun on* 25-9-71.

(1) Hand written calculations from 1959-60 to 1966-67 . . . . M-30

(2) Statement for the year 1959-60 to 1966-67 showing Gross Amount of Development Expenditure and that written off in Profit and Loss Account M-31

(3) Details of Producing Property and Depletion thereof . . . .

(4) Statement showing sub-ledger head-wise details of Accounts of Expenditure . . . . .

(5) Audit repots for the years 1959-60 to 1967-68 . . . M-16 to M-21

1959-60 M-16
1960-61 M-17
1961-62 M-18
1962-63 M-19
1963-64 M-20
1964-65 M-21
1965-66 M-2
1966-67 M-3
1967-68 M-4

8. Details regarding Interest, Depreciation, Expenditure furnished by the ONGC on 22-10-71:— M-32 .

(*i*) Details of interest—others

(*ii*) Clarification regarding the year of dismentling of Pilot Plant Refinery;

(*iii*) Clarification regarding interest paid and due,

(*iv*) Details of Depreciation included under the Head "Amortization and Depletion" and

(*v*) The service-wise break-up of the expenditure of Rs. 24·02 crores as directed by the Tribunal

9. Documents exhibited on 10-11-71 through Shri Tiwari (M.W. I)

(1) Copy of Assessment Order Assessment year 1966-67 (Copy attested by the witness) . . M-23

(2) Copy of Revised Income Tax Return for 1956-67 (Copy attested by the witness . M-24

(3) Annual Report and Accounts 1968-69 . . . . . M-22

10. Documents exhibited on 11-11-71 (through Shri Vaidyanath—M-W-2)

(*i*) ONGC Accounts Manual (March, 1965) M-25

(*ii*) Details of Provision for doubtful debts made in the year 1966-67 M-26

(Original signed copies of M-3 and M-27)

11. Documents filed on 10-12-71 (as required under P. O. s order *vide* p. 22 of the Order Sheet)

(1) Reconciliation between Depreciation shown in the Schedule of fixed Assets and Rs. 200·22

(2) Reply of the Mazdoor Sabha on 17-11-71 to the notice to admit Jacts . . .

(3) Award dated 10-6-71 between ONGC and I. O. C. regarding Crude O'l M-41

(4) Note explaining details of addition to pipelines . . .

12. Documens filed on 20-12-71

(1) Certified copy of Assessment order for 1966-67 . . . . M-39

(2) Note on Provision for Doubtful debts

NIT 3 OF 1970

I. *Statement and Documents filed by Workers Unions*

1. Written Statement dated 3-12-70 of *Tel, Avam Prakratik Gas Ayog Karamchari Sangh, Dehradun.*
2. *Written Statement of All India ONGC* Employees Union (NFPW) dated 7-12-70
3. Written Statement dated 22-12-70 (7-1-71) of the ONGC Employees Mazdoor Sabha, Baroda.
4. Written Statement dated 6-1-71 of the ONGC Karamchari Union, Dehra Dun.
5. Written Statement dated 7-1-71 of the ONGC workers Association Dehra Dun.
6. Rejoinder dated 22-1-71 of the ONGC Employees Mazdoor Sabha, Baroda.

II. Exhibited produced by the Workers Unions.

W-1 Letter No. LW. 7/2/68/378, dated the 12-1-70 from ONGC to the President, ONGC Employees Mazdoor Sabha, Baroda.

W-2 Letter No. 23/30/71-ONGC dated 2-7-71. from Ministry of Petroleum and Chemicals to Shri Sarat Maha President, ONGC Employees Mazdoor Sabha, Baroda

W-3 Circular letter No. HQ/CA/BS/69-70/63/PP, dated 12-5-70 from ONGC

W-4 Annual Report and Accounts 1969-70.

W-5 Assessment Order dated 28-3-1970.

[No. 4(67)/70-LR-IV.]

CORRIGENDUM

New Delhi, the 18th February 1972

S.O. 892.—In the Order of the Government of India in the Ministry of Labour and Rehabilitation (Department of Labour and Employment), S.O. No. 3989, dated the 3rd September, 1971, published on pages 5656 of the Gazette of India, Part II Section 3 Sub-Section (ii) dated the 23rd October, 1971, on the 3rd line of the Schedule for "24th November, 1970" read "21st November, 1970."

[No. L/1912/34/71-LRII.]

BALWANT SINGH, Under Secy.

श्रम और पुनर्वास मंत्रालय

(श्रम और रोजगार विभाग)

शुद्धि पत्र

नई दिल्ली, 19 फरवरी, 1972

का० आ० 892—भारत के राजपत्र के भाग 2, खंड 3, उपखण्ड (ii) तारीख 23 अक्तूबर, 1971 के पृष्ठ 5656 और 5657 पर प्रकाशित, भारत सरकार के श्रम और पुनर्वास मंत्रालय (श्रम और रोजगार विभाग) के आदेश, संख्या का० आ० 3989 तारीख 3 सितम्बर, 1971, में अनुसूची की दूसरी पंक्ति में "24 नवम्बर, 1970" के लिए "21 नवम्बर, 1970" पढ़िये।

(सं० एल०/1912/34/71-एल० आर० II)

बलवन्त सिंह,

अवर सचिव।

MINISTRY OF FINANCE

(Department of Revenue and Insurance)

CUSTOMS

New Delhi, the 18th March 1972

S.O. 893.—In exercise of the powers conferred clause (a) of section 7 of the Customs Act, 1962 (52 1962), and in supersession of the notification of Government of India in the Ministry of Finance (I partment of Revenue and Insurance) No. 27-Custo dated the 3rd April, 1971, the Central Governm hereby appoints the port of Neendakara in the St of Kerala to be a customs port for the unloading imported goods and the loading of export goods or class of such goods.

[No. 37-A/F. No. 14/5/70-LC. I

वित्त मंत्रालय

(राजस्व और बीमा विभाग)

सीमा-शुल्क

नई दिल्ली, 18 मार्च, 1972

का० आ० 894.—सीमा-शुल्क अधिनियम, 1962 (1962 का 52) की धारा 7 के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार के वित्त मंत्रालय (राजस्व और बीमा विभाग) की तारीख 3 अप्रैल, 1971 की अधिसूचना सं० 27—सीमा शुल्क को अतिष्ठित करते हुए, भारत सरकार केरल राज्य में नीन्डाकारा पत्तन को, आयात किए गए माल को उतारने और निर्यात-माल को चढ़ाने या ऐसे माल के किसी वर्ग के लिए, सीमा-शुल्क पत्तन के रूप में एतद्द्वारा नियत करती है।

[सं० 37-ए फा० सं० 14/5/70—एल सी—II.

ORDER

Stamps

New Delhi, the 18th March 1972

S.O. 894.—In exercise of the powers conferred b clause (k) of sub-section (1) of section 9 of the India Stamp Act, 1899 (2 of 1899), the Central Governmen hereby permits the Poona City Municipal Corporatio to pay stamp duty, chargeable on the debentures issued by it to the value of forty-five lakhs of rupees, a the consolidated rate of one per cent as provided under sub-section (1) of section 8 of the said Act.

[No. 7/72-Stamps/F. No. 471/3/72-Cus. VII.

K. SANKARARAMAN, Under Secy

आदेश

स्टाम्प

नई दिल्ली, 18 मार्च, 1972

का० आ० 894—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार पूना सिटी म्यूनिसिपल कार्पोरेशन को, उक्त अधिनियम की धारा 8 की उपधारा

(1) के अधीन यथा उपबंधित एक प्रतिशत की समेकित दर से, उसके द्वारा पुरोधृत किए गए पैंतालीस लाख रुपए के मूल्य के डिबेंचरों पर प्रभार्य, स्टाम्प-शुल्क का संदाय करने के लिए एतद्द्वारा अनुज्ञा देती है।

[सं० 7/72-स्टाम्प/फा० सं० 471/3/72-सीमा० 7]

के० शंकररामन, अवर सचिव।

(राजस्व और बीमा विभाग)

बीमा

नई दिल्ली, 11 दिसम्बर, 1971

का० आ० 5489.—आपात जोखिम (उपक्रम) बीमा अधिनियम, 1971 (1971 का 41) की धारा 11 की उपधारा (1) और धारा 12 और 13 के उपबंधों के अनुसरण में, केन्द्रीय सरकार, वित्त मंत्रालय, (राजस्व और बीमा विभाग) आपात जोखिम बीमा स्कीमों के निदेशालय में आपात जोखिम बीमा काम के संबंध में नियुक्त निदेशक, उपनिदेशक सहायक निदेशकों और मुख्य प्रवर्तन अधिकारियों को उक्त उपबंधों के प्रयोजनों के लिए एतद्द्वारा प्राधिकृत करती है।

[सं० फा० 66 (4)/बीमा 1/71-I]

का० आ० 5489.—आपात जोखिम (उपक्रम) बीमा अधिनियम, 1971 (1971 का 51) की धारा 3 की उपधारा (1) के उपबंधों के अनुसरण में, केन्द्रीय सरकार, वित्त मंत्रालय (राजस्व और बीमा विभाग), आपात जोखिम बीमा स्कीमों के निदेशालय में आपात जोखिम बीमा काम के संबंध में नियुक्त निदेशक, उपनिदेशक, सहायक निदेशकों, मुख्य प्रवर्तन अधिकारियों और प्रवर्तन अधिकारियों को उक्त उपधारा में विनिर्दिष्ट सभी शक्तियों या उनमें से किसी का प्रयोग करने के लिए एतद्द्वारा प्राधिकृत करती है।

[सं० फा० 66(4)/बीमा 1/71-II]

का० आ० 5490.—आपात जोखिम (माल) बीमा अधिनियम, 1971 (1971 का 50) की धारा 8 की उपधारा (1) और धारा 14 और 15 के उपबंधों के अनुसरण में केन्द्रीय सरकार, वित्त मंत्रालय (राजस्व और बीमा विभाग) आपात जोखिम बीमा स्कीमों के निदेशालय में आपात जोखिम बीमा काम के संबंध में नियुक्त निदेशक, उपनिदेशक, सहायक निदेशकों और मुख्य प्रवर्तन अधिकारियों को उक्त उपबंधों के प्रयोजनों के लिए एतद्द्वारा प्राधिकृत करती है।

[सं० फा० 66(4)/बीमा 1/71-III]

का० आ० 5491.—आपात जोखिम (माल) बीमा अधिनियम, 1971 (1971 का 50) की धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, ओरिएन्टल फायर एंड जनरल इंश्योरेंस कम्पनी लिमिटेड, मुम्बई, को उक्त अधिनियम के प्रयोजनों के लिए अपने अभिकर्ता के रूप में कार्य करने के लिए एतद्द्वारा नियुक्त करती है।

[सं० फा० 66 (4)/बीमा 1/71-IV]

का० आ० 5492.—आपात जोखिम (उपक्रम) बीमा अधिनियम, 1971 (1971 का 51) की धारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, ओरिएन्टल फायर एण्ड जनरल इंश्योरेंस कम्पनी लिमिटेड, मुम्बई, को उक्त अधिनियम के प्रयोजनों के लिये अपने अभिकर्ता के रूप में कार्य करने के लिये एतद्द्वारा नियुक्त करती है।

[सं० फा० 66(4)/बीमा 1/71-V]

का० आ० 5493.—राष्ट्रपति, भारत के संविधान के अनुच्छेद 299 के खण्ड (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, एतद्द्वारा निदेश देते हैं कि संघ की कार्यपालन शक्ति का प्रयोग करते हुए, बनाई गई निम्नलिखित लिखतें उन की ओर से किसी अधिकारी द्वारा, जो ओरिएन्टल फायर एण्ड जनरल इंश्योरेंस कम्पनी लिमिटेड के सहायक शाखा सचिव से निम्न पंक्ति का न हो, निष्पादित की जा सकेंगी, अर्थात् :—

"आपात जोखिम (माल) बीमा अधिनियम, 1971 (1971 का 50) या आपात जोखिम (उपक्रम) बीमा अधिनियम, 1971 (1971 का 51) के अनुसरण में या उससे संबंधित या उक्त अधिनियम में से किसी के अधीन बनाई गई किसी स्कीम के अनुसरण में सभी संविदाएं और सम्पत्ति के हस्तांतरण पत्र

[सं० फा० 66(4)/बीमा 1/71-VI]

का० आ० 5494.—आपात जोखिम (माल) बीमा अधिनियम, 1971 (1971 का 50) की धारा 11 की उपधारा (1) के उपबन्धों के अनुसरण में, केन्द्रीय सरकार, वित्त मंत्रालय (राजस्व और बीमा विभाग) आपात जोखिम बीमा स्कीमों के निदेशालय में आपात जोखिम काम के सम्बन्ध में नियुक्त निदेशक उप निदेशक, सहायक निदेशकों, मुख्य प्रवर्तन अधिकारियों और प्रवर्तन अधिकारियों को उक्त उपधारा में विनिर्दिष्ट सभी शक्तियों या उनमें से किसी का उपयोग करने के लिए एतद्द्वारा प्राधिकृत करती है।

[सं० फा० 6 (4)/बीमा 1/71-VII]

ए० रामगोपालन,

विशेष कर्तव्य रूढ़ अधिकारी और पदेन अवर सचिव।

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1972